United States Court of Appeals

for the Second Circuit

APPENDIX

76-7428

In The

United States Court of Appeals

For The Second Circuit

HOWARD C. HIRSCH, PAUL L. KOHNS and MARSHALL S. MUNDHEIM,

Plaintiffs-Appellants,

-against-

EDMOND duPONT, WALLACE C. LATOUR, MILTON A. SPEICHER, FRANCIS I. duPONT & CO., F.I. duPONT GLORE FORGAN & CO. and duPONT GLORE FORGAN INCORPORATED,

Defendants-

(Continued on Reverse)

UNITED STATES COURT OF APPEALS
FILED
NOV 19 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

Volume V, 1281a - 1600a

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and

HASKINS & SELLS and THE NEW YORK STOCK EXCHANGE, INC.,

Defendants-Appellees

On Appeal from an Order of the United States District Court for the Southern District of New York.

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	Page
Docket Entries	1a
Complaint	10a
Amended Complaint	19a
Opinion Dated June 5, 1975	28a
Opinion Dated June 30, 1976	78a
Ex. 3 to Hyde Affidavit, Sworn to 2/13/75	100a
Notice of Appeal	140a
Selected Trial Testimony	141a

Plaintiffs' Exhibits:

Pl. Ex. 1 -	Agreement dated July 2, 1970 among FID & Co., Hirsch & Co., certain general partners of Hirsch & Co., certain limited partners of Hirsch & Co. and certain subordinated lenders of Hirsch & Co.	321a
Pl. Ex. 8 -	Agreement Subordinating Account dated January 4, 1971 between FIDGF and Hirsch	353a
Pl. Ex. 9 -	Agreement Subordinating Account dated January 4, 1971 between FIDGF and Kohns	364a
Pl. Ex. 10-	Agreement Subordinating Account dated January 4, 1971 between FIDGF and Mundheim.....	375a
Pl. Ex. 11-	Letter dated October 7, 1971 from Larry S. Glazer to Mundheim	386a

		Page
Pl. Ex. 13-	Letter dated November 5, 1971 from Larry S. Glazer to Hirsch	388a
Pl. Ex. 20-	Statement of financial condition of FID & Co., as of September 28, 1969 with accountant's opinion by H & S	391a
Pl. Ex. 21-	Annual report of FID & Co., for the year ending December 31, 1969	393a
Pl. Ex. 26-	Answers to financial questionnaire and supplementary schedules of FID & Co., Parts I and III as of September 28, 1969 with accountant's opinion by H & S.....	410a
Pl. Ex. 28-	Answers to financial questionnaire of FIDGF Parts I and III as of September 27, 1970 with accountant's opinions by H & S.	420a
Pl. Ex. 109-	Memorandum of net capital of FID & Co. pursuant to the requirements of Rule 325 of the Exchange as of September 28, 1969 with accompanying letter by H & S dated November 26, 1969.....	451a
Pl. Ex. 112-	Supplementary report on examination of FID & Co. by H & S dated November 26, 1969.	459a
Pl. Ex. 113-	Supplementary report on examination of FID & Co. by H & S dated November 25, 1970.	463a
Pl. Ex. 123-	NYSE memo dated Feb. 2, 1970 re FID & Co. Possible violation of Exchange Rule 325.	468a
Pl. Ex. 124-	NYSE memo dated Feb. 13, 1969 re FID & Co. Possible violations of Exchange Rule 440 and Sec Rule 17a-3.....	473a
Pl. Ex. 125-	Letter dated Feb. 28, 1969 from Charles Moran Jr., to Robert Bishop.....	477a
Pl. Ex. 126-	Handwritten note dated March 13, 1969 by Bishop.....	482a
Pl. Ex. 128-	Letter dated April 10, 1969 from Bishop to Pollack.....	483a

		Page
Pl. Ex. 129 -	April 10, 1969 Censure of FID & Co.	484a
Pl. Ex. 130 -	Memo dated May 15, 1969 by John Ring re FID & Co. Main Office: New York	485a
Pl. Ex. 134 -	NYSE Memo dated Sept. 18, 1969 from McElroy, Steinberg, Berk, Parker and Lee to McChesney re Examiners' Short Report.....	492a
Pl. Ex. 139 -	NYSE Confidential Memorandum dated Nov. 26, 1969 from Dept. of Members Firms to Board of Governors re: Charges Against FID & Co.....	493a
Pl. Ex. 143 -	Report dated Sept. 28, 1969 by John Bolos.....	515a
Pl. Ex. 144 -	Memorandum dated December 3, 1969, subject: Current Status of F.I. duPont Meeting held December 1, 1969.....	523a
Pl. Ex. 145 -	Memorandum dated January 6, 1970, two pages, prepared by Mr. Chenet.....	524a
Pl. Ex. 154 -	Handwritten analysis of Francis I. duPont, called Supplemental White Sheet, Regular Questionnaire as of September 28, 1969.....	526a
Pl. Ex. 167 -	NYSE memo dated June 24, 1970 from Frank E. Dominach, Jr. to Cunningham & Arning re: FID, Glore & Hirsch merger.....	527a
Pl. Ex. 168 -	Letter dated July 1, 1970 from LDA to Wallace LaTour.....	531a
Pl. Ex. 192 -	Letter dated October 6, 1967 from Charles A. Rubin to Bishop, Stock, LaBoe and Chenet.....	533a
Pl. Ex. 198 -	Letter dated Nov. 3, 1970 stamped signature of Robert M. Bishop to Wallace C. LaTour.....	534a

		Page
Pl. Ex. 199 -	Letter dated Nov. 4, 1970 stamped signature of Bishop to LaTour.....	535a
Pl. Ex. 208 -	Letter dated November 24, 1970 from Bishop to FIDGF & Co.....	536a
Pl. Ex. 211 -	NYSE memo dated Dec. 1, 1970 from Bishop to Haack re: Reorganization of FIDGF & Co.....	537a
Pl. Ex. 218 -	Letter dated Sept. 30, 1968 from Haskins & Sells to FID & Co.....	539a
Pl. Ex. 225 -	FIDGF Answers to Financial Questionnaire & Supplementary Schedules as of April 30, 1971 and Accountants' Opinion.	542a
Pl. Ex. 226 -	Haskins & Sells memo dated Dec. 16, 1969 by Lill re: FID & Co. Mtg. with NYSE.	567a
Pl. Ex. 251 -	Letter dated April 15, 1970 from LaTour to Bishop.....	571a
Pl. Ex. 254 -	Hirsch & Co. Statement of Financial Condition as of April 26, 1970 and (Unaudited) July 2, 1970 and (Unaudited) Supplemental Schedules for the period from July 2, 1970 to August 31, 1971.	580a
Pl. Ex. 260 -	Omnibus Account Computer Run.....	588a
Pl. Ex. 261 -	N.Y. Stock Exchange Memorandum dated May 13, 1970.....	590a
Pl. Ex. 262 -	Chart "F. I. duPont, Glore Forgan & Co., Hirsch & Co.: Partner & Capital"	592a

Defendant New York Stock Exchange Exhibits:

Deft. Ex. B -	NYSE Questionnaire Answered by F. I. duPont & Co., for the Period Ending 2/27/70.....	593a

		Page
Deft. Ex. C	- NYSE Questionnaire Answered by F. I. duPont & Co., for the Period Ending 5/31/70.....	602a
Deft. Ex. K	- Letter dated July 1o, 1970 from Fred J. Stock, Jr., to Edmund duPont.	611a
Deft. Ex. M	- NYSE Membership Application of Mundheim.....	613a
Deft. Ex. Q	- NYSE Membership Application of Hirsch.....	618a
Deft. Ex. KK	- NYSE Membership Application of Kohns.....	623a
Deft. Ex. F	- Hirsch & Co. Answers to Special Operations Questionnaire, April, 1970.....	628a
Deft. Ex. G	- Financials.....	640a
Deft. Ex. H	- Memorandum of Proposed Agreement Between Hirsch & Co. and F.I.D.....	643a
Deft. Ex. L	- Letter dated July 23, 1970 from F.I.D.G.F.& Co. to the NYSE.....	655a
Deft. Ex. N	- Agreement of December 14, 1970...	656a
Deft. Ex. U	- Letter dated February 7, 1969 from Bishop to Kohns, and memo.....	675a
Deft. Ex. W	- Letter dated November 26,1969 from Pincus to Kohns, and memo.....	680a
Deft. Ex. X	- Letter dated March 17, 1970 from Spies to Kohns.....	688a
Deft. Ex. Y	- February 9, 1970 NYSE Report on visit to Hirsch & Co.....	690a
Deft. Ex.FF	- Newspaper article.....	697a
Deft. Ex.CC	- Newspaper article.....	699a
Deft. Ex.DD	- Newspaper article.....	700a

		Page
Deft. Ex. EE -	Newspaper artice.....	702a
Deft. Ex. GG -	Newspaper article.....	704a
Deft. Ex. HH -	Letter dated April 27, 1970 from Kohns.....	705a
Deft. Ex. JJ -	NYSE Application.....	706a
Deft. Ex. PP -	Memo dated June 12, 1970 from Paul duPont to Thompson.....	712a
Deft. Ex. QQ -	Memo re: Reduction of Capital Charges.....	717a
Deft. Ex. SS -	Memo of Net Capital.....	719a
Deft. Ex. YY -	F.I. duPont Financials.....	721a

Defendant Haskins & Sells' Exhibits:

Deft. Ex. A -	Letter dated November 13, 1968 from H & S. to Speicher.....	744a
Deft. Ex. B -	Letter dated December 18, 1969 from H & S to Speicher.....	748a
Deft. Ex. C -	Letter dated October 2, 1968 from H & S to the SEC.....	752a
Deft. Ex. D -	Letter dated November 26, 1969 from H & S to the NYSE.....	753a
Deft. Ex. E -	Letter dated November 26, 1969 from H & S to the SEC.....	754a
Deft. Ex. G -	Letter dated December 18, 1969 from H & S to the SEC.....	755a
Deft. Ex. H -	Letter dated November 28, 1969 from the SEC to H & S.....	756a
Deft. Ex. I -	Letter dated January 12, 1970 from H & S to the NYSE.....	757a
Deft. Ex. J -	Letter dated January 12, 1970 from H & S to the NYSE.....	758a

		Page
Deft. Ex. K -	Letter dated November 25, 1970 from H & S to the NYSE.....	759a
Deft. Ex. L -	Letter dated November 25, 1970 from H & S to the SEC.....	760a
Deft. Ex. M -	Letter dated November 30, 1970 from the SEC to H & S.....	761a
Deft. Ex. N -	Letter dated January 13, 1971 from H & S to the NYSE.....	762a
Deft. Ex. O -	Letter dated January 13, 1971 from H & S to the SEC	763a
Deft. Ex. P -	Letter dated November 11, 1969 from H & S to Kohns.....	764a
Deft. Ex. Q -	1969 Partnership Income Tax Return for Hirsch & Co.....	768a
Deft. Ex. R -	1970 Partnership Income Tax Return for Hirsch & Co. in Liquidation.....	814a
Deft. Ex. V -	Chart.....	869a
Deft. Ex. W -	F.I. duPont & Co. Statement of Financial Condition, April 30, 1970..	870a

Plaintiffs' Exhibits Continued:

Pl. Ex. 1 -	Agreement dated July 2, 1970 among FID & Co., Hirsch & Co., certain general partners of Hirsch & Co., certain limited partners of Hirsch & Co. and certain subordinated lenders of Hirsch & Co.....	871a
Pl. Ex. 4 -	Letter dated December 3, 1970 from Marshall S. Mundheim to FIDGF.....	904a
Pl. Ex. 6 -	Letter dated December 3, 1970 from Howard C. Hirsch to FIDGF.....	906a
Pl. Ex. 27 -	Answers to special financial questionnaire of FID & Co. Parts I and II as of January 30, 1970.....	908a

		Page
Pl. Ex. 50 -	Special operations questionnaire of FID & Co. as of March 31, 1970.....	915a
Pl. Ex. 127 -	Letter dated March 26, 1969 from Bishop to Moran.....	924a
Pl. Ex. 135 -	NYSE report dated Sept. 30, 1969 by D. Steinberg re: FID & Co. Answers to Special Questionnaire as of June 30, 1969.....	925a
Pl. Ex. 137 -	Letter dated Nov. 12, 1969 from Robert A. Spies to Milton A.Speicher..	943a
Pl. Ex. 140 -	Letter dated Nov. 26, 1969 from Samuel A. Gay to Robert A. Spies.....	947a
Pl. Ex. 150 -	Letter dated January 8, 1970 from Wallace LaTour to Robert M. Bishop....	949a
Pl. Ex. 159 -	Set of handwritten computations and analysis dated April 6, 1973, bearing initials AJW re: FID & Co. Special Q.....	953a
Pl. Ex. 232 -	Letter, August 4, 1970.....	954.2a
Pl. Ex. 235 -	Letter dated June 26, 1970 from Haskins & Sells to Edward First.....	955a
Pl. Ex. 263 -	Book, Audits of Brokers page 104.....	957a

Affidavit of Hyde, Sworn to on February 13, 1975 and the exhibits thereto.....	962a
Notice of Motion for a More Definite Statement.....	1074a
Affidavit of Jackson, Sworn to on April 25, 1972.....	1976a
Pretrial Order.....	1078a
Affidavit of Spinogatti, Sworn to on June 6, 1972.....	1087a

	Page
Memorandum Order of June 28, 1972.....	1089a
Order No. 42825.....	1091a
Order and Judgment.....	1098a
Trial Transcript, Complete.....	1100a

letter, was that filed by Haskins & Sells with the New York Stock Exchange and with the Securities and Exchange Commission?

I show you in that connection Haskins & Sells Exhibits I and J marked for identification (handing).

A The material inadequacies letters were filed with the Securities and Exchange Commission and the New York Stock Exchange on January 12, 1970.

MR. HYDE: I offer Exhibits I and J in evidence.

MR. CAMHY: No objection, your Honor.

(Defendant Haskins & Sells Exhibits I and J were received in evidence.)

xx BY MR. HYDE:

Q In connection with Exhibits I and J, Mr. Lill, I would like to show you Plaintiffs' Exhibit 112 in evidence and ask you if that is the material inadequacies letter to which Exhibits I and J refer (handing)?

A Yes, it is.

Q Mr. Lill, I would like to direct your attention to exhibits put in evidence this morning by the plaintiff, Nos. 28, 23 and 113, all constituting reports filed by Haskins and Sells in connection with its 1970 surprise audit, and then show you Exhibits K and L marked for iden-

tification and ask you if you can tell from these exhibits when Plaintiffs' Exhibits 28, 23 and 113 were filed with the New York Stock Exchange and with the Securities and Exchange Commission (handing).

Mr. Lill, I may have mistakenly included the material inadequacies letter. Let me withdraw from my last question Plaintiffs' Exhibit 113.

A Exhibit 28, which is the answers to financial questionnaire as of September 27, 1970, was filed with the New York Stock Exchange and the Securities and Exchange Commission on November 25, 1970.

The other filing that went with the November 25 letter is the Rule 325 computation which I don't have as one of those exhibits.

MR. HYDE: I don't believe that has been offered by the plaintiffs, and unless plaintiff intends to offer it I will not pursue it.

MR. CAMHY: Excuse me. I thought I did offer it.

MR. HYDE: The 1970?

MR. CAMHY: Yes. The material inadequacies letter. If I didn't -- the Rule 325 or the material inadequacies?

MR. HYDE: Rule 325.

MR. CAMHY: No, I did not offer the Rule 325.

THE WITNESS: Well, then, the November 25th filing was Exhibit 28.

MR. HYDE: The answers to financial questionnaire.

THE WITNESS: That's right.

MR. HYDE: May I offer Defendant Haskins & Sells Exhibits K and L in evidence.

THE COURT: All right.

MR. CAMHY: No objection.

(Defendant Haskins & Sells Exhibits K and L were received in evidence.)

xx

BY MR. HYDE:

Q I would like to show you Defendant Haskins & Sells Exhibit M marked for identification and ask you if that is an acknowledgement received by Haskins & Sells from the New York office of the Securities and Exchange Commission acknowledging receipt and filing pursuant to Rule 240.17a-5 of the general rules and regulations under the Securities and Exchange Act of 1934, of Plaintiffs' Exhibit 28 (handing)?

A Yes, that is an acknowledgment.

MR. HYDE: Your Honor, I offer Haskins & Sells Exhibit M in evidence.

THE COURT: All right.

MR. CAMHY: No objection.

(Defendant Haskins & Sells Exhibit M was received in evidence.)

xx MR. CAMHY: I presume the witness testifies that they received this in the ordinary course.

MR. HYDE: I believe the witness has testified.

MR. CAMHY: He just said it was what it was. But I assume what he means is that they received it.

THE WITNESS: That we received this acknowledgement.

MR. CAMHY: Yes.

THE WITNESS: Yes, sir.

MR. CAMHY: Thank you.

MR. HYDE: I have just two more of these and I will be through with this line, I believe, your Honor.

Q Let me show you, Mr. Lill, Plaintiffs' Exhibit 113, which is the material inadequacies letter with respect to the 1970 audit, and then show you Exhibits O and N marked for identification and ask you if you can tell from those when Exhibit 113 was filed with the Securities and Exchange Commission and with the New York Stock Exchange?

A Yes. Exhibit 113, the material inadequacies letter was filed with the SEC and the Stock Exchange on

January 13, 1971.

MR. HYDE: I offer Defendant Haskins & Sells Exhibits N and O marked for identification in evidence.

THE COURT: All right.

MR. CAMHY: No objection.

(Defendant Haskins & Sells Exhibits N and O were received in evidence.)

xx MR. HYDE: Your Honor, I am about to embark on a new line of inquiry with respect to the contents of the questionnaire. I can proceed now, or if you --

THE COURT: You have ten minutes, Mr. Hyde, I suggest you use it.

MR. HYDE: I can use it.

THE COURT: All right.

BY MR. HYDE:

Q Mr. Lill, I show you Plaintiffs' Exhibit 26, the answers to financial questionnaire, Part 1, filed in connection with the 1969 surprise audit (handing).

Yesterday, Mr. Lill, you were examined in your direct testimony with respect to two exhibits, Plaintiffs' Exhibits 135 and 137, results of New York Stock Exchange examination, Francis I. duPont, and interrogated as to whether or not you were aware of certain facts mentioned in those two exhibits, and I would like to run through

some of those with you and ask you whether or not those facts are disclosed in Haskins & Sells answer to financial questionnaire for 1969.

First you were questioned about inadequate segregation, lack of control in connection with segregation. This was on page 63 of your testimony.

I would like to ask you if you can to direct the Court's attention to the answers to financial questionnaire and show where that problem is disclosed?

A In the answers to financial questionnaire, Question 6-G, which is labeled fully paid securities not segregated, and refers to Note 2, indicates the segregation errors. That was pledged in error, and so on.

Question 6-G, where the numbers are shown as to the magnitude of that particular problem.

Q You were asked about unsecured and inadequately secured accounts on page 64 of your testimony.

I ask you, can you tell us where the Haskins & Sells answer to financial questionnaire discloses that problem?

A The answer to Question 6-D, unsecured account, where it is reported there is two million eight on debits and two million six six five of shorts. They are the customer unsecured accounts.

Q On page 69 of your testimony you were examined with respect to dividend records and aged dividends.

Could you tell us where that problem is disclosed in the answer to financial questionnaire?

A The first place is Question 4-D-3 where it shows dividends on securities failed to receive of eight million one three eight, and in Question 13 it has dividends and interest receivable broken down into two points, one of current items, and the two are other, or non-current where the amounts are shown of three million five in debits and three million nine six four in shorts.

THE COURT: What is the item referring to dividends in Answer 6-G, of what does that refer to?

THE WITNESS: 6-G is the magnitude of the --

THE COURT: Short in dividend accounts is the statement.

THE WITNESS: That is where the firm was unable to segregate securities because they were shown in dividend accounts and they didn't have the stock.

BY MR. HYDE:

Q Next at page 72 you were asked about long and short security differences.

Could you tell us about where those are reflected in Haskins & Sells answers to financial question-

naire?

A They are in Question 13, near the bottom of the page, where it says "Valuation of: Security count differences and dividend differences."

That is where the longs and shorts.

Q What are the amounts?

A Security count differences long are twenty-nine million nine, short are six million nine, and the dividends that were declared on those securities, while there were differences in them, are long 868,000 and short one million 809.

In addition the items shown in the answer to Question 10-B, security positions and fail to deliver and fail to receive accounts which are being researched for disposition also represent a type of difference.

Q What are those figures, just for the record?

A The amounts shown there are debit balances of six million 615, securities long four million 139, and securities valuations short of two million 079.

Q Mr. Lill, in connection with the services Haskins & Sells performed with respect to the duPont merger of July 2, 1970, couldyou tell us whether there came a time when you had a meeting with any of the plaintiffs here?

A My first involvement was in mid-June, around June 16, 17, 18 period, at which time I believe the agreement had been relatively finalized and I met with Mr. First, the attorneys for Hirsch --

Q With what firm is he connected?

A Guggenheim & Untermeyer. I believe that's the correct name. Mr. First, Mr. Mundheim, Mr. Garibaldi and Mr. Weil.

Q Who is Mr. Garibaldi?

A Mr. Garibaldi was the controller or financial officer of Hirsch.

Q And who is Mr. Weil?

A He was the operations manager of Hirsch.

Q Was there any discussion at that meeting with respect to securities differences of Francis I. duPont?

A As I recall, Mr. First, and Mr. Mundheim inquired as to whether or not I could identify on the next audit of duPont, if I would be able to identify the

differences that were created prior to the merger date from those that could be identified subsequent to the merger date, because there was concern -- I believe the agreement provided that the Hirsch parties wouldn't be involved in any losses incurred as a result of differences arriving prior to July 2, and their interest was primarily could Haskins & Sells in connection with their next audit identify which ones were created before and which ones were created after, and I responded I couldn't do that. The only thing I would be able to do the next audit would be to identify the differences at the date of thenext audit, and I wouldn't be able to determine which ones were in existence prior to July 2 and which ones came about after July 2.

THE COURT: We will adjourn until 2 o'clock.

(Luncheon recess)

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AFTERNOON SESSION

2 P.M.

E D W A R D J. L I L L, resumed.

MR. CAMHY: Your Honor, before Mr. Hyde proceeds, I would like to bring up the question of certain subpoenas which have been served upon the plaintiffs by the defendants' attorneys, duces tecum subpoenas for production of documents at this trial.

I would like to make a motion to quash one portion of one of these subpoenas. The subpoenas ask for five items. Three of those are already in the courtroom and we have produced. Item 5 we do not have, and I make that representation.

Item 4 is copies of the above individual's income tax returns for the years 1969, 1970, 1971, and 1972. My motion is to quash so much of the subpoena as applies to those income tax returns, or at least until there has been some demonstration of the purpose for which they are being brought to this trial.

MR. BROOKS: I would be glad to respond to that since it is only the subpoena from the New York Stock Exchange. We have included in the subpoena duces tecum a request that the income tax returns of the plaintiffs be produced for two or three reasons. One, we would like

see what they claimed as a loss going to the proof of damages. Two, we would like to see how they claim that as a loss, because if they claimed it as a loss due to fraud it is entitled to a different treatment under the income tax laws than it would be if it were claimed as a loss of a capital asset.

Third, we think the income tax return of the plaintiffs will reflect their overall financial sophisticated background, that they were in a number of financial enterprises, they have a number of -- they have a lot of sources of income of a sophisticated and varied nature. Those are the three I can think of right now. I think any one of them merits production response to the trial subpoena. They are plaintiffs and have sued my client. I see no countervaling value to be served by suppressing their income tax returns.

I have no objection whatsoever to a stipulation of confidentiality, if they are used only for the purposes of this trial, and the exhibits may be impounded, returned, or whatever Mr. Camhy wishes to be done with them, but I submit they are relevant and should be produced.

MR. CAMHY: Insofar as these returns reflect what type of investments these gentlemen made I think they are wholly irrelevant. There was ample-- well, I just don't

think it has anything to do with this case. People make investments all the time.

THE COURT: I am inclined to agree with that. I don't see the purpose that would be served. The reason given by Mr. Brooks doesn't impress me very much. I think he can show they are sophisticated businessmen apart from their income tax return. The first reason I think I would like you to deal with. He has indicated that you are making a claim, and whether it is going to be conclusive in this trial I don't know, but you are certainly making the claim that he is entitled to see how the loss which is alleged was reported and utilized in the income tax return.

MR. CAMHY: May I make a suggestion, your Honor, that we secure the returns and extract from them whatever pertains to the duPont investment or the loss, and then when we have seen that decide whether it has any relevance, but that they not be permitted to have access to the whole tax return, but just those portions relating to duPont. We will give them a representation that it is complete, and we will be glad to show the returns to your Honor, if they want that verified.

THE COURT: I will tell you what I will do. I will do that. I will allow the extracts provided there is an in camera showing of the entire return to me, and you make

your representation to Mr. Brooks that the extracts shows how these losses were treated.

MR. CAMHY: If they are there. I don't know.

MR. BROOKS: I think there is also relevance to the returns to show the losses the plaintiffs were taking from their investment in Hirsch & Company throughout the period, in addition to the loss for which they are claiming. It is our contention that they were suffering very severe losses in 1969 and the firstpart of 1970 simply from having a capital investment in Hirsch & Company. I think that bears upon their motive for making the transaction with duPont.

So that that portion of the returns, if the extract route were to be followed, should be included in the extract.

MR. CAMHY: The Hirsch & Company report shows what losses Hirsch was taking, and I believe that was produced.

MR. HYDE: I produced it.

MR. CAMHY: Haskins & Sells is in possession of our client's tax returns, so they have that, and I don't know why the personal returns should be any more informative. If Hirsch was losing money this is reflected in Hirsch & Company's returns.

I offer to produce the 1970, 1971, and 1972 tax returns, that portion as your Honor stipulated.

THE COURT: All right.

Before we go on, Mr. Hyde, I have now had an opportunity to read the opinion in the United Housing Foundation matter, and the decision in respect to the limited partnership I have reconsidered it and am of the same opinion.

MR. HYDE: Yes, sir.

Your Honor, I won't offer these in evidence now but I take it there is no question as to the genuineness of the partnership tax returns which I have marked as Haskins & Sells Exhibits Q and R for identification. Copies were furnished last week to Mr. Camhy.

MR. CAMHY: May it be accepted subject to a motion to strike within 48 hours based upon some specific inaccuracy.

MR. HYDE: I don't wish to have the witness use them, but only identify them as being the tax returns from the files of Haskins & Sells, if I may.

THE COURT: All right.

BY MR. HYDE:

Q Mr. Lill, are Exhibits Q and R for identification copies of the 1969 and 1970 federal income tax returns for

Hirsch & Co., the partnership?

A Yes, they are. These are the returns on our file.

THE COURT: For what years?

MR. HYDE: 1969 and 1970, your Honor. Q is 1969 and R is 1970.

MR. CAMHY: May I ask a question on the voir dire?

THE COURT: Yes.

VOIR DIRE BY MR. CAMHY:

Q Where did you get these returns?

A From our files.

Q The files of Haskins & Sells?

A Yes.

MR. CAMHY: Thank you.

Your Honor, at such time these are offered in evidence we may have something to say about the propriety of a professional simply going to his own files for something like this instead of requesting it from the client.

THE COURT: I think in this case I have enough problems before me in regard to the issues in the present case. Let's leave that for another day.

MR. HYDE: I may say for the record I have no problem with having these treated as confidential, sealed, or whatever the plaintiffs wish, but I think that they are relevant and the production of them to defend ourselves

when we are being sued is certainly proper.

THE COURT: I certainly don't see why there should be any claim of confidentiality in a lawsuit like this about a partnership tax return. An individual tax return is something entirely apart, but I don't see any problem with that. I think it is --

MR. BROOKS: I think it is a strange argument for Mr. Camhy to make after having made the argument he shouldn't produce the individual tax returns because we were going to put the partnership tax returns in evidence.

THE COURT: All right. I have your point.

BY MR. HYDE:

Q Mr. Lill, I show you Plaintiffs' Exhibit 235 in evidence, being the letter dated June 26, 1970, which is attached to the merger agreement. I believe that sets forth the audit procedures and reports that Haskins & Sells was to file and prepare in connection with the Hirsch-duPont merger.

A Yes, that's right.

Q Each of those audit procedures and reports relates to Hirsch & Co., does it not?

A Yes, it does.

Q My question is, was Haskins & Sells ever retained to perform any comparable audit procedures or to render any

mdh8 Lill-cross

comparable reports with respect to the condition of duPont in connection with the Hirsch-duPont merger?

A No, not as of the July 2nd merger.

Q Mr. Lill, I would like to go back to the December 16, 1969, meeting, with the New York Stock Exchange and with the duPont people, and particularly directing your attention to the treatment of the long and short securities differences. Now, I believe you testified, but I want to make absolutely sure of this, as of this point in time what, if anything, did Rule 325 provide with respect to the treatment of such differences?

THE COURT: What was the last few words in your question?

MR. HYDE: The treatment of the differences. What, if anything, did 325 provide with respect to the treatment of such differences?

MR. CAMHY: Your Honor, is this to test his knowledge or to proffer Rule 325, because Rule 325 as it stood then is available in text form. If it is for the purpose of showing his understanding I suppose that is something else.

MR. HYDE: I offer it for his understanding. And also I submit that he is an expert in this area. I think Mr. Camhy's questions would elicit that.

A In 1969, differences were not -- were treated on a case by case basis for Rule 325 purposes. The rule itself did not specifically provide for any charge for shorts or any credit for longs. It was not until some time in August of 1971, when rule changes became effective, where there were prescribed treatments for it.

Q What was that treatment?

A The treatment was then charge for security differences that had not been resolved within 45 days. It was graduated.

Q Mr. Lill--

THE COURT: Under the old rule, how long was allowed for differences to be resolved?

A It was not covered at all under the old rule. There was no time frame, no provision for differences at all in the old rule. The first time differences were provided for by rule was in this change.

Q Is it fair to say, Mr. Lill, that the stock exchange gave effect to such differences prior to 1971 on an ad hoc basis, based upon your experience at that time.

MR. CAMHY: May we have the question reread, please?

(Question read)

MR. CAMHY: I object to the form of the question. I don't understand what he means by ad hoc. Do you mean

case by case?

MR. HYDE: I thought ad hoc was a commonly used phrase in the legal profession.

MR. CAMHY: It is. But is it case by case or impromptu. I don't understand the meaning of ad hoc.

MR. HYDE: I mean on a case by case basis depending upon the particular circumstances of the case.

MR. CAMHY: All right.

A It is my understanding that is the way it was done during that period of time.

Q With respect to what has been described here as a liquidation of the long differences, and the discussion that you, Mr. Bishop, other representatives of the stock exchange and representatives of the duPont firm had, do you tell us what your understanding was when you left that meeting on December 16, 1969, as to what, if anything, would occur?

A My understanding was they were going to consider the liquidation of long differences and that they were going to try to form some sort of a relationship and liquidate those that they thought related in some way to the shorts or the dividends or have some reason for liquidating. I did not go away with the impression they were going to go out and liquidate long differences.

Q Helter skelter?

A Right.

Q In any of your subsequent audits, did any facts come to your attention that would indicate to you that what you have just described had not been done?

A No.

Q I think I cast that in terms of your subsequent audits, and I wish now to include any engagement whatsoever or any knowledge whatsoever that Haskins & Sells may have received at any later date. Would your answer be the same?

A Yes.

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CROSS-EXAMINATION

BY MR. BROOKS:

Q Yesterday you testified you had been at Haskins & Sells for 21 years, if I recall correctly?

A Yes.

Q Did you start right out at Haskins & Sells in the brokerage field?

A Yes, almost immediately upon becoming an employee of the firm I started working on brokerage engagements.

Q Did Haskins & Sells have any kind of training program for the neophyte accountants in those days?

A Yes, there was a formal training program involving a week or two a year which involves several days of brokerage accounting training.

Q Thereafter, when you participate on a brokerage engagement would you do so under the supervision of more experienced and superior accountants who were employed by Haskins & Sells?

A Yes.

Q You mentioned earlier that you attended a meeting in June of 1970 at which Mr. First, of Guggenheim & Untermeyer was present, and I believe you said a Frank Garibaldi, who was controller of Hirsch & Company.

Did you know Mr. Garibaldi prior to that meeting?

A Yes, sir.

Q When did you first meet Mr. Garibaldi?

A I met Mr. Garibaldi shortly after I joined Haskins & Sells, because he was an employee of Haskins & Sells.

Q In what capacity was Mr.Garibaldi employed at Haskins & Sells when you first joined the firm?

A He was what I believe we refer to as the senior accountant or in charge accountant, and I was employed on the staff as an assistant accountant.

Q Does that mean that on an engagement of an audit of a brokerage firm Mr. Garibaldi would be the senior man on the scene directing the day to day operations of the audit?

A Yes. He was the so-called in charge accountant on engagements that I was assigned to, and I reported to him.

Q Do you recall having participated in any particular brokerage firm audits with Mr. Garibaldi?

A Yes. I participated in several.

Q Do you recall the name of any of those firms?

A Yes. The largest one where I spent the

most time with him was the Merrill Lynch engagement where he was the in charge accountant and I was one of his assistants.

MR. CAMHY: May we have the time fixed?

Q Can you tell us what time that engagement was?

A That was in, I guess, the late '50s, early '60s, the 1958 and '60 period.

Q Was the product of that Merrill Lynch audit the same kind of document that we have had introduced in evidence in this trial called the answers to regular financial questionnaire or long form questionnaire?

MR. CAMHY: I will object to that, your Honor. I don't know what relevance that has to this proceeding.

THE COURT: I don't, either.

MR. CAMHY: He is trying to establish Mr. Garibaldi.

MR. BROOKS: It's simple, your Honor. One of our contentions in our pretrial submission is, and it will be as the evidence reveals, Mr. Garibaldi became the controller of Hirsch & Company and had access to all of the documents of a financial or operational or capital condition of the duPont firm, was asked to make an

analysis of those by his principals, the plaintiffs, and I would like to show that there was no person better qualified to make that analysis than Mr. Garibaldi because he did such things as prepare those reports when he was with Haskins & Sells for a firm as large and complicated as Merrill Lynch.

MR. HYDE: I think the evidence will show the plaintiffs delegated the job of going out and doing the investigation of duPont to Mr. Garibaldi.

MR. CAMHY: Your Honor, Mr. Garibaldi's competence I don't think can be established in this way. Unless we were to go into everything he did in the Merrill Lynch audit, and even then it dates back to 1958.

THE COURT: I am more or less inclined to agree with that. Is Mr. Garibaldi going to testify?

MR. CAMHY: I believe so. They subpoenaed him and I plan to use him.

THE COURT: It seems to me there is no point in doing indirectly what you can do indirectly.

Q Mr. Lill, yesterday you used the term paperwork crunch on Wall Street, and I think today you gave us some dates, that it started in 1967 and started ending sometime in mid-1969, early 1969, is that right?

A Yes. It was '67 and '68 were the big years, and then in '69 it started to tail off.

Q Would you tell us exactly what you meant by the paperwork crunch? what are some of the details of that? How did they reflect themselves?

A Well, there were large numbersof security transactions. The volume of transactions was unusually great, and the settlement procedure became very strained. There were large numbers of over-the-counter issues traded, and large numbers of listed issues traded, all of which involved a lot of securities movement, more than the brokerage community was equipped to handle at the time.

The large number of journal entries, the large numbers of movements of securities, gave rise to large numbers of errors and delinquencies in record keeping on Wall Street in general.

Q What efforts did brokerage firms follow or make to cope with this problem?

MR. CAMHY: Your Honor, is this general testimony as to the status of the industry or duPont in particular?

THE COURT: I think what he is attempting to put in the record is that during that period of time,

part of which you are certainly concerned with, that there was a great deal of overwork and that the record keeping was in a chaotic state in most of the brokerage firms. I think he is entitled to put that in the record.

MR. CAMHY: I think the question was directed to the efforts firms made to cope with it. Is he doing to be established as an expert on firms besides this firm, and if so, should that be made clear?

THE COURT: I will allow him to answer the question. Let's see where it goes.

A The firms generally had to employ more people. They employed large numbers of temporary staffs, and they just tried to increase their computer capacities and increase their clerical capacities so that they could cope with the large number of transactions.

Q Is the computer capacity of a firm sometimes referred to as its electronic data processing capacity?

A Yes, sir.

Q Were these efforts undertaken by the firms during the paperwork crunch to cope with it a source of substantial expense to the brokerage firms?

A Yes, they were.

Q What impact did the paperwork crunch have on the firm's ability to compute its net capital under

Rule 325?

A Well,to compute capital under rule 325 you need current records, so to the extent that this crunch caused erroneous records or a delinquency in records it had a negative effect on their ability to get a good, accurate computation.

Q And is it a general rule that if you have inaccuracy or uncertainty inyour records you can't claim credit for an item which you cannot fully identify?

MR. CAMHY: He is leading the witness in a cross-examination which is really direct examination. There are ways of framing the question without putting words in the witness' mouth. I appreciate I had to call this witness becasue that's the way I have to prove the case, but I don't think it'; a license here for the defendants to turn this into a parroting situation where they propose various formulations and have the witness agree with them. I object to the form of the question.

THE COURT: Thoughyou are examining him as an adverse witness I don't really know how Mr. Brooks could take advantage of that as far as I can see in cross-examining him. There is no way to deal with that. I don't know what you mean by direct examination

on cross-examination. He is cross-examining him.

Proceed.

MR. BROOKS: I may also point out there are cross-claims outstanding between Hasksins & Sells and the stock exchange.

Q Do you have the question in mind, Mr. Lill?

A No, I don't. Will you repeat it, please.

MR. BROOKS: Maybe the reporter can read it back.

(Question read)

A I am not sure I fully understand that question. Credit for long items?

Q Let's take the item we have been spending most of our time on, long securities difference. If you have something as a long securities diffrence, I assume that in the records there is an inability to fully identify the situation, is that correct?

A That's right. Otherwise it wouldn't be a difference.

Q As long as it remains a difference, it at this time is not eligible for any capital credit, is that right?

A Yes.

Q Suppose you did research on a long securities

difference and discovered that that was really owned by the member firm. Then you could claim capital credit for it, could you not?

A Once you found -- yes, once you completed a reasonable amount of research and enough time elapsed with no claims coming in then you would claim a credit.

Q Is the same analysis applicable in the area of fails?

A Fails generally have money against them, so, you know, there is a ledger balance against a security delivery. If there was a fail without money against it then it would be treated the same as the difference.

Q Prior to the time of the paperwork crunch, had security differences been a problem in the brokerage accounting function?

A Not to my knowledge. We did not have problems.

Q How about fails?

A Fails were not either prior to that period.

Q So that these are relatively new concepts, is that correct, at this time?

A New problems, yes.

Q Was there a good deal of disputation amongst accountants and member firms and regulatory

authorities as to how to account for these new concepts in and about 1968-69?

MR. CAMHY: I object to the form of the question.

THE COURT: Overruled.

A There were many meetings taking place between the profession and the profession and the regulators to try to establish what's the proper way to treat differences and, as a matter of fact, there were committees formed by the SEC and by the stock exchange to study the question with the accountants.

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MR. CAMHY: I move that it be stricken unless he fixes the time so we can relate it to this case. I just don't think that saying this was generally going on during a certain period in any way constitutes proof that certain things happened.

THE COURT: All right, Mr. Lill --

MR. BROOKS: Let me try to do that, your Honor. I think I can do that.

Q Mr. Lill, were the 1968 audits done by brokerage accounting firms the first audits which showed the paper work crunch and the results of an audit?

A The 1968 and the late 1969, possibly.

Q And 1969 as well?

A Subsequently.

Q And is it as to these audits that your prior answer would be applicable?

A It is, yes. During the '67 and '68 period when these discussions were going on, and '69.

Q On your long form questionnaire for Francis I. duPont as of September 28, 1969, on which your report was affixed and dated November 26, 1969, there were certain numbers shown for security differences.

Were there more differences that you found at the completion of your first box count during that audit

than there are shown on the audit itself?

A The differences are established on the first day of the audit, the first weekend of the audit, and then they are worked on during the period of the audit and the numbers shown in the questionnaire are those which have not been resolved by the end of the audit.

The amounts of those that were resolved do not appear.

Q So your first look at the security differences at duPont in connection with the '69 audit show larger numbers than eventually appear on your report?

A Yes, sir.

Q And the diminution of those numbers was as a result of research, was it not?

A Yes.

Q Who did that research?

A The research is primarily done by a group of duPont employees, the differences group. And when they find a resolution they bring it to the attention of the Haskins & Sells group that is assigned to differences. And the Haskins & Sells group then evaluated that solution. Was it a good, valid solution. If it was considered a good, valid solution, we then made the correcting entry to take it out of differences and put in its appropriate place.

Q Do you know whether the research by the DuPont personnel continued on after November 26th?

A There was a group in place that did continue, yes, sir.

Q When you signed off on November 26th did you know whether there were differences which were reported in your report as to which research had been done but not yet completed?

A Yes. There are various stages of completion. The research of one item may go over a period of six or eight weeks before it is ultimately resolved. So at any given date on any given difference there are varying degrees of progress.

Q And when you signed off on November 26th can you tell us the approximate number of differences as to which there had been some research completed but not yet enough for you to withdraw them from your report as differences?

MR. CAMHY: Your Honor, there are two different kind of differences shown. They are shown in dollar volume. They also consist of a massive number of items. I do not understand the question when he says the approximate number of differences, whether he is referring to the volume of differences or the number of differences, and whether he is

referring to the longs or the shorts or both.

MR. BROOKS: Whatever Mr. Lill was understanding and--whatever Mr. Lill meant when he was using the term, differences, I would like his answer to.

A Well, as to numbers of differences there were thousands. Something between four and 6,000, as I recall, that were still open that were in various stages of progress. Some very little, others almost complete. I could not fix an effective completion of what the difference was.

Q You say that a lot of progress had been made?

MR. CAMHY: I object to the question. I think the witness has already testified.

THE COURT: I think he has answered that, Mr. Brooks.

Q I take it in your long form reports for DuPont in 1969 and 1970, the security differences, both long and short, are expressed in terms of market value of securities as of the audit date; is that correct?

A That's right. The market price as of the audit date is applied to the number of shares of the difference.

Q Yesterday in response to a question by Mr. Camhy you testified that you couldn't say one way or the other whether the differences that were reported in 1969 were the same differences that were reported in the 197.

audit because that was not one of the functions of your audit.

I ask you whether an additional reason isn't that the market value is changing on security differences during the year and must be factored into the answer to that question.

A The change in security prices would definitely be an element of change in one year to the next.

Q So that even if you had 100 shares of AT&T that was a short security difference in 1968 you wouldn't know from a long form report in 1969, or 1970, whether that was a security difference, at least unless you could assume that the market price for AT&T remained the same.

A That's right.

Q And pursuing that analysis a little further, if you had, say, $30 million in long security differences at the beginning of the month which reflected the general makeup of the securities in the market and the market dropped 10 per cent at the end of the month, you would have reduced the long security differences to $27 million, wouldn't you?

A Without any change in cleanups--

Q Right, with no research at all, it sits tight, the market drops 10 per cent long security differences

drop 10 per cent also; isn't that right?

A That's right.

Q At the December 16th meeting in 1969, which both Mr. Camhy and Mr. Hyde have asked you about, do you recall Mr. Bishop urging the DuPont principals to direct research efforts toward the long differences?

A Yes, I do.

Q Do you have the memorandum in front of you of that meeting which is Trial Exhibit 226?

A I do now.

Q You do. Would you take a look at the last sentence on page 3 and the first sentence on top of page 4. The sentence on top of page 4 begins with the statement that H&S then agreed with Mr. Bishop's conclusion. And I take it that that conclusion is at least in part expressed on the bottom of page 3 where it says that "he said that he strongly recommended that Francis I. DuPont undertake such liquidation procedures to improve their poor Rule 325 capital position."

Did you understand that any suggestion that Mr. Bishop made at that meeting to liquidate long differences and improve the capital position included researching those differences to determine that they could be liquidated and applied to the net capital computation on the

credit side?

A Mr. Bishop never implied that they should be liquidated without research. The whole discussion was that research to some extent had been performed and they knew some amounts of the longs. As a matter of fact, with the long differences the firm had been concentrating on researching the shorts because there were exposures to loss. And their efforts had not been directed with the same effort toward the longs.

They were primarily concerned with finding the shorts. They were exposure to longs. However, they had progressed to some extent with the longs, and the essence of Mr. Bishop's suggestion, as I recall it, was that, well, why don't you start to concentrate more on the longs so that you can learn enough about them and put you in a position to liquidate.

Q Let's say that you had a long difference of 100 shares of AT&T and the market price is 50, and you do a little research--well, let me back up for a minute.

At the time that's a long difference that's no capital help to the firm, is it? Under the net capital rule?

A No, it's not.

Q Now, if you do some research on those 100 shares

of AT&T you find out that no customer or other broker can make a claim against them and that they are really the property of Francis I. duPont & Company, and then you sell them.

Do you then realize their full cash value, $5,000 as a capital credit?

MR. CAMHY: I object to the form of the question. The question is stated, you do a little research and you find out no customer can make a claim against you. It seems to me that that's a conclusion.

The question ought to be, what research do you do as a basis for satisfying itself to that effect? What is it that you find? What fact do you find? Do you identify the element that caused the error? That's a conclusion. What we are battling here with is what underpins that conclusion, and to put it to the witness in that way simply requests the same conclusory statement which got everybody into this trouble in the first place.

The question ought to be put, of what is it that is necessary to satisfy a responsible person that can sell this stock. Not, you do a little research and you satisfy yourself.

MR. BROOKS: If Mr. Camhy wanted to ask that question he has opportunity. If he wants to object to the

form of my question and you rule against me, I will put another question.

THE COURT: I agree with that, Mr. Brooks. The question is proper as far as I am concerned.

BY MR. BROOKS:

Q Do you have the question in mind, Mr. Lill?

A I would like it read back.

THE COURT: Having satisfied yourself that the securities belong to the firm and then you sell it.

Q Do you better your capital position by their full market value, to wit, $5,000 in this example?

A If you have satisfied yourself as to that difference then you in effect have resolved the difference and then you can sell it and you do improve your capital.

Q On the full market value of the securities?

A Yes.

Q We have seen some documents, I'm not sure which they were, which reflected telephone discussions with you and Mr. Speicher in December or January 1969-70 about the tax impact of liquidation of longs.

Do you recall that document, or testimony? It was testimony.

A Yes.

Q Would there be any tax impact of liquidatio

of longs unless the longs had been researched and determined to be firm property?

MR. CAMHY: I object to that, your Honor, for the following reasons: It's a two-part question and again calls for a conclusion. There would be, I submit, a tax impact on the longs if it was taken into net worth. Simple as that. Whether you did it responsibly or not. If you took it into net worth you are going to pay a tax on it, and the question, therefore, asssumes the conclusion, and that is, would there be a tax unless you had reached by research this conclusion.

What I'm saying really is that it doesn't test the research. The tax is payable if you take it into net worth.

THE COURT: Mr. Camhy, I think that what you're doing is you are taking over Mr. Brooks' examination. I think that is certainly a proper question for you to come back at, and you can cross examine on it.

MR. CAMHY: I am sorry, your Honor. I will try to--

THE COURT: All right, proceed.

Q Do you have the question in mind, Mr. Lill?

A Yes. When Mr. Speicher called me the tax question that was involved was really just what year do you take

it in on. 1969, or 1970? And the question was directed more toward settlement date versus trade date. In other words, if the settlement date is in '69--

Q I understood the problem, and I presume Mr. Speicher was interested in getting the most favorable income tax consequence for his firm.

But my question is: You have also talked about simply liquidating long differences without learning anything new about them and still ending up with differences, although they may happen to the liquidating.

My question to you is: Don't you have to have determined that those long differences are owned by the firm before you even start talking about tax impact on the firm?

A Well, the whole question of when differences are charged, or credited for tax purposes was a very controversial issue with the IRS during this period of time. And they ultimately I believe ruled in a similar tax matter that you had to establish the loss which in effect was to point to when the difference was created before you could determine what year it was chargeable or creditable.

Q Or the gain.

A Or the gain. Charged or credited.

Q What I am trying to get at, sir, is you have a

long difference, you don't know whose security that is unless you research it; isn't that correct?

A That's right.

Q Now, if you sell a security the ownership of which you don't know you certainly don't have any tax impact on the selling firm, do you? Until you establish that the security belonged to the firm.

A If they took it into income there would be a tax impact. If they did not take it into income, if they took that credit and put it in a reserve somewhere, then there would be no tax impact.

Q Are you aware that the duPont firm had in mid about January 30, 1970, been involved with the Exchange in what was called a special financial questionnaire?

A I was aware when it was filed, yes.

Q Did Haskins & Sells play any role in the preparation of that document?

A In the case of special questionnaires duPont used our report department, or typing pool to type it for them. That's the only role we played. We typed it.

Q If you had simply liquidated a long difference prior to the filing of that questionnaire, but after your audit report and you made no attempt to resolve it, would that security show up on that special financial questionnaire

as of January 30th as a long difference?

A I don't know how they prepared that special questionnaire, so if when they prepared it they continued to consider that a difference that had been liquidated, but still a difference, it would have been included.

If, on the other hand, if they considered it a resolved difference, it would not have been included.

Q It's no longer a difference if it's resolved?

A Then it would not be a difference, but then I don't know how they did it for purposes of their special questionnaire.

Q I spoke a little earlier of that meeting had in June of 1970 with Mr. First, Mr. Garibaldi. I believe you testified that Mr. First asked you whether Haskins & Sells at a point later in time could determine whether security differences which arose in respect to an audit of the firm which was to come out of the merger had or had not arose prior to July 2nd in respect to the duPont firm, F.I. duPont, do you recall that testimony this morning?

A Yes.

Q Did Mr. First tell you why he was inquiring about that subject?

A Well, he had expressed concern at the large number of differences and wanted to make sure his client

was protected. That's what he expressed to us.

Q But the large number of differences was known. Did he express any concern about differences that might not have been known at that time?

A Well, not that I detected.

Q What did Mr. Garibaldi say at this meeting about the differences?

A He referred, Mr. Garibaldi referred to the large numbers of differences.

Q Did Mr. Garibaldi have any work sheets with him, schedules of any kind at the meeting?

A I don't recall.

Q Did Mr. First tell you what his objective was in seeking to know whether you could identify the time at which such differences arose?

A There was a part of the agreement that was going to protect the Hirsch people against losses that were incurred on differences created prior to July 2nd, and he was trying to find a way that that could be monitored so that it could be determined at a later date as to just what differences did Hirsch share in and what differences did they not share in.

Q Did you tell him whether you could provide the knowledge that they would require?

A No, I told him that at the next audit we could only tell the differences at that date, but we would not be able to tell when they were created.

Q Now let me ask you another question on that score. When you did your 1970 audit as of September 27th, I think your basic report is Exhibit 28, that is the long form audit, the long form questionnaire as of September 27, 1968, and you came up with the differences in that next audit after your meeting with Mr. First, could you tell when you had come up with those differences whether the ingredients of those difference columns had come from Francis I. duPont Co. as it existed before July 2nd or Glore Forgan, William R. Stats & Co. as it existed before it joined up with Francis I. duPont & Co., or indeed from Hirsch & Co. before July 2nd?

A I could not tell precisely which differences were created by whom.

Q So all those difference figures in Exhibit 28 reflected--are the differences for the combined firm of duPont, Glore Forgan & Co. as of September 27th and nothing more, there is no more knowledge you can get out of that. You couldn't separate the ingredient firms or the time.

A I couldn't precisely separate it. I could only make assumptions that since the numbers were large and the

numbers were large in a prior year, that there were some continuing. But I could not point to which ones were continuing and which ones were not. The only way I can B3 tell that is when they are resolved, when they find an answer to one then they can determine that, yes, this was created by an error made in 1967, 1968 or 1969. But I cannot tell that precisely until the resolution is found. Because when I find the resolution then I know when the error was made.

The only thing I can do other than that is know simply because the numbers are so large that there must be some that do apply to those earlier years.

THE COURT: All right.

BY MR. BROOKS:

Q Does the general format of the document that we have been referring to as a material inadequacies letter in which examples are Exhibit 112 and 218, contain both the material inadequacies discovered by Haskins & Sells and whatever program the firm is undertaking to resolve the inadequacy?

A Yes. It includes the inadequacy and the corrective action taken, or proposed, I believe the requirement provides.

Q Let's focus in on the two material inadequacies

letters in this case, the one as of November 26, 1969, which is Exhibit 112, and the one as of September 30, 1968, which is Exhibit 218.

Did you, or did Haskins & Sells people to your knowledge, discuss with the duPont personnel the inadequacy and a desirable program to resolve it before you sent out those two letters?

A Yes.

Q Were you in accord with the resolutions that are set forth in the material inadequacies letter for each inadequacy as being resolutions that are properly designed to deal with the inadequacies?

A Yes. Although they were processed at the time and not affected.

Q I understand. You were questioned by Mr. Camhy on an observation that you made of a letter by Norman Swanton, I believe the testimony showed that you saw that Mr. Swanton's analysis was based on the long form financial questionnaire, which was Exhibit 26.

My only purpose in this question is asking you if the long form, or audited financial questionnaire which you referred Mr. Camhy to this morning in response to that question is indeed our Exhibit 26?

A May I see the Swanton memo?

Q That is not in evidence. Mr. Camhy just asked you that out of the air. Well, out of the deposition transcript.

A I would have to look at it to refresh my memory as to whether I could precisely identify it to the questionnaire or not.

Q Could you tell us, was it the immediately prior audited financial questionnaire of duPont, Francis I. du-Pont?

A No, the only thing I could tell from that memo was that the information, or the evaluation he made was an evaluation that yo u could expect from somebody that analyzed the last questionnaire. Because he went item by item indicating the problem areas.

Q You gave us this morning in your cross examination with Mr. Hyde the basic--you named the basic products that one of your audits of a brokerage firm included.

You identified a financial questionnaire, you would produce the material inadequacies letters, the capital computation and the statement of financial condition which would be sent to customers, I believe.

Were those products of an audit known generally across the brokerage community?

A Yes, they were.

Q Every firm submitted these documents, didn't they?

A Yes. These were base requirements required of all brokerage firms.

Q And they would have been required of Hirsch & Company at this time, would they not?

A Yes, sir.

Q And that Hirsch & Company when Haskins & Sells did an audit they would work closely with Hirsch personnel, would they not?

MR. CAMHY: I object. He testified that he hadn't done anything with respect to Hirsch & Company.

MR. BROOKS: WEll, if the witness knows the answer, he can tell us. If he doesn't, he can say so.

THE COURT: Mr. Brooks, you know, that is a waste of time. Let us proceed.

Q Mr. Lill, the exhibits introduced this morning by Haskins & Sells don't contain a transmittal letter for the 1968 material inadequacies letter produced as a result of your audit of Francis I. duPont for that year. Although we do have such a letter addressed to the Securities and Exchange Commission. Was that 1968 material inadequacies letter sent to the New York Stock Exchange?

A Yes.

Q It was. How about the 1968 audited memorandum of capital computation?

A I'm not sure of that. I would have to check the transmittals to determine that.

Q How about the 1969 memorandum of capital computation?

A The 1969, I believe it was.

Q There has only been a transmittal letter to the SEC that has been introduced, that is the only reason I asked the question.

A Yes, I believe that the Rule 325 computation was transmitted to the Exchange after it was transmitted to the SEC.

Q Did the Stock Exchange rules in 1968 require a material inadequacies letter to your knowledge?

A Yes. In the rule change that was promulgated in November of 1967 where the SEC required it I believe the Stock Exchange then required it also.

Q This morning Mr. Camhy interrogated you about whether there had been any program to discover at duPont the cause of errors in duPont's records.

Mr. Lill, isn't it a fact that inaccuracies in duPont's records might just as well have been caused by errors of other brokers, or transfer agents as well as

duPont itself?

A Some part of the differences arise from other brokers or transfer agents or banks.

Q Wasn't one of the big problems during the paper work crunch the fact that the transfer agents were just swamped and were six to eight months behind in getting out their transfer material?

A The transferring function was one of the larger causes of the problem, particularly in duPont.

Q Do you have any figures as to how far the transfer agents fell behind at the height of the paper work crunch?

A Not that I recall. They were delinquent, I couldn't quantify the delinquency.

Q When a firm has, say on its books, a fail to receive, is it likely that that fail to receive reflects the fault of somebody other than the brokerage firm which fails to receive?

A Fail to receive by its nature is not necessarily a fault. A fail to receive is a very legitimate item in recordkeeping. The fact that a fail to receive gets old is because of another broker's inability to deliver it to you.

Q Can short securities differences or long

securities differences result from the fault of other brokers and transfer agents?

A They can, yes.

MR. BROOKS: I have no further questions.

T3a

CROSS EXAMINATION

BY MR. POLLACK:

Q Mr. Lill, in 1969, Haskins & Sells made a computation of the net capital in duPont for purposes of Rule 325 of the New York Stock Exchange, is that correct?

A Yes, sir.

Q The computation was made by Haskins & Sells and not by duPont, is that correct?

A It was made by Haskins & Sells from the answer to financial questionnaire as of the audit date.

Q In that connection, certain judgments had to be made, such as how to treat long and short securities differences, is that correct?

A Yes, sir.

Q The judgments were made by Haskins & Sells and not by duPont, is that correct?

A In that computation they were our judgments and we indicated in a note what that judgment was in case any reader had a difference.

Q I take it that when you said it was "our judgment" you mean it was the judgment of Haskins & Sells?

A Yes.

Q duPont never denied you access to any of the books and records, did it, in connection with your audit work?

mh2 Lill-cross

A No, sir.

Q So as far as you know no one at duPont ever denied anyone else at Haskins & Sells access to its books and record is that correct?

A Not to my knowledge.

Q duPont never gave you any false or incomplete information in connection with your audit work, did it?

A To the extent that records were delinquent information would have been incomplete. I don't believe they ever deliberately did it. I just can't respond positively that I was never given any incomplete information.

Q As you testify today, do you know of any false or incomplete information that was ever given Haskins & Sells by duPont in connection with its audit?

A No,sir. Only to the extent that there were errors in the records, and there were delinquencies in the records. In that regard it might be incomplete or it might be false to the extent that it is an error.

Q Were any of them, if there were any, material to your statements of 1969?

A I didn't hear the first part of the question.

Q If there were any such delinquencies in the records of duPont, did they in any way affect or render misleading your financial statements of 1969, so far as you know?

A I believe the delinquencies and the differences are clearly shown in the financial reports.

Q Haskins & Sells did not compute the net capital of duPont for Rule 325 purposes at any time in 1970 prior to July 2, 1970, is that correct?

A Prior to September of 1970. I don't believe we made any computation as of July 2, 1970.

Q In any event, at no time subsequent to your 1969 audit and prior to the time of the merger of July 2, 1970, did Haskins & Sells make a 325 computation for duPont, is that correct?

A No, sir. We did not.

MR. POLLACK: Thank you.

THE COURT: Mr. Camhy?

MR. CAMHY: Your Honor, may I have just a minute or two to go over my notes?

THE COURT: Yes.

(Pause)

MR. HYDE: Your Honor, while we have a moment, may I supply to the court and to counsel copies of the rules and forms that Mr. Lill has been testifying to, because they are somewhat different today than then, and it may be hard to find copies of these out-dated forms.

I have Form X-17A-5 of the Securities and Exchange

Commission in the form in which it existed in 1969 and 1970.

Also, I have a provision from the Code of Federal Regulations as of January 1, 1969, containing portions of Rule 17A of the Securities and Exchange Commission pertaining to the filing and keeping of records by broker-dealers and also certain excerpts from the rules of the Securities and Exchange Commission then in effect providing with respect to the public disclosure and public reference facilities, and I would like to make those available to all concerned.

REDIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Lill, on the question of the delivery of the maerial inadequacies letter, I show you a letter dated November 11, 1969, which is 252. Does that refresh your recollection that as early as November, 1969, you had been in touch with the New York Stock Exchange advising them that there would be a material inadequacies letter and it would contain significant items?

A Yes. This letter is a letter that is required from the accountants whenever an extension of time for filing is requested.

Q So that as early as November the exchange knew

there was going to be a material inadequacies letter and it would contain significant items?

A Yes, I stated in that letter on the basis of the audit that part of the audit which has been completed to date the possibility exists that there would be material inadequacies.

Q Did you say the possibility or the likelihood?

A It says the possibility exists that we may be commenting on material inadequacies in the accounting system or system of internal accounting control.

Q As a practical matter, in the letter that uses the word possibility, did that in effect mean there would be one?

A Yes, unless they could demonstrate to us that there were no inadequacies present or that they had answers for the things that we believed to be inadequacies.

Q Mr. Lill, do you know of your own knowledge whether the Rule 325 computation that you made in November of 1969 was available as a public document at that time or within the six months thereafter?

A I don't know of my own knowledge. I don't know whether the commission made it public or whether the stock exchange would make it public.

Q The audit report was a public document, wasn't it,

the long form questionnaire?

A The answers to financial questionnaire, part 1, is a public document.

Q Have you told us to the best of your recollection that conversation with Mr. First and the plaintiffs insofar as it dealt with the matters we have been talking about here?

A As I responded, yes. As I recalled it.

Q That is the extent of your knowledge?

A Yes.

Q Mr. Lill, going back to Rule 325 as it existed at the latter part of 1969, in your testimony on the case by case basis which the exchange adopted as to the longs and shorts, didn't it involve the use of the word net worth in the rule? Let's see if I am right. The rule said NET ~~less~~ worthless certain other deductions and that the exchange had the right to make these charges, it was under their construction of the word net worth. That is a contingent liability because of errors that may rule in contingent liabilities.

MR. BROOKS: That is a question that goes into the mind of the stock exchange. I don't know Mr. Lill has any competence to answer that. We ought to determine that first.

Q Do you recall that the rule provided for the phrase net worth, and then certain deductions, certain adjustments to net worth?

A The rule starts with the expression and a defined term net worth, and then it provides for specified debit items or deductions and comes down with an amount defined as net capital.

Q In administering the rule on a case by case basis the exchange was imposing capital charges on different items?

A That's my understanding.

Q Did you understand that they exercised that authority under the terms of the rule as it was then written?

A Yes.

Q You talked about resolution of item on audit, and satisfying you with a resolution of an item?

A Yes.

Q I assume you are talking there about identifying the error and getting a factual resolution of the item on that basis?

A That's right.

Q You are not talking about simply examining records and finding no claim or something like that, but really an identifiable cause of the error?

A That's right. The resolutions that I referred

to that take place between the audit date and the date of our opinion or actual factual resolutions.

Q When a person researches long differences he looks presumably throughout his other records to see if he can find the cause of the long difference, isn't that right?

A That's among the starting points, yes.

Q If he can find that cause, why, then, he has resolved it?

A Yes.

Q If he can't find that cause, he still has a question mark, doesn't he?

A Yes.

Q He could look through all his records and see if he has a claim against the stock, can't he?

A Yes.

Q I guess if he didn't have -- if he had a claim against the stock he wouldn't have a long difference -- that is to say, if his records immediately showed that somebody, that this stock belonged in somebody's account, why, then, that would be the end of the difference, wouldn't it?

A Yes. If he found who it belonged to, sure.

Q When you looked through your records to see if the stock belongs anywhere, and you can't find it, then you end up with a difference?

MR. HYDE: I object on grounds of repetition. We have been through this so many times now.

MR. CAMHY: There was testimony about research, and I want to get to how the research was conducted.

MR. BROOKS: Conducted by whom?

THE COURT: Mr. Camhy, most of you in getting to a point really go over too much ground that has been gone over. If you want to ask him about his answers to a question about resolution, how the research

was accomplished, do that. You don't have to have the question asked again. Ask him that.

Q Were you ever told how the research was conducted that resulted in the liquidation of these differences?

A No.

Q Did you ever ask?

A No.

THE COURT: Is that supposed to be his responsibility?

MR. CAMHY: I think, your Honor, we will assert that it was.

Q There was mention on cross of a January 30 answers to special questionnaire. You said it was typed in your office. Did you have occasion to look at it after it was prepared?

A Not that I recall. I may have. Under normal circumstances the duPont people would deal directly with our report department in having it typed. They would bring over the drafts, it would be typed, it would be proofread, and returned to them. Every once in a while I did read them. I don't recall whether this is one that I read or not.

Q In discussing the matter of the resolution

of the differences with Mr. Speicher, did he ever tell you that a number of the magnitude of six or seven million dollars would go into net worth as a result of these liquidations?

A I don't recall the exact number being stated.

Q My point is this: That when we discussed it this morning we were talking about a smaller number of $2 million into net worth --

MR. BROOKS: Your Honor, this has nothing to do with any of the cross-examination. It's just more direct examination.

MR. CAMHY: I will get to something you did.

MR. BROOKS: You are going about it the wrong way.

Q Mr. Brooks asked you on cross if you had resolved the difference or if your research had satisfied you that it was your security, why, then, your profit had increased by thta much, or your net worth had increased by that much, isn't that right?

A As I understood the question, it was that if your research was concluded and you resolved that it was your security and you sold it would you get capital credit for the full amount of the proceeds, and I said yes.

Transcript Page Missing

simply the numerical difference between the number sold and the number of shorts bought in, and that it was only $2 million,but that capital was helped by six million, and that the reason --

MR. BROOKS: I object to that.

Q -- and that at that time you knew that there was going to be some effect on net worth but not to the full maount ofthe sales.

MR. BROOKS: I object to the form of the question, to the fact that it's way beyond the cross-examination, the fact that it misconstrues the question Mr. Camhy attributes to Mr. Brooks which didn't mention the words "net worth" at all.

THE COURT: Do you understand the question, Mr. Lill?

THE WITNESS: I believe Mr. Camhy's question is the same one as this morning. I did not know the exact numbers of the quantity sold out or the quantity bought in. I did not know at the time whether or not, or to what extent there was going to be a charge for the shorts that were bought in. The effect on net worth, therefore, is not precisely known, either.

During this period, this whole year, securities were bought in during 1969, becasue when you have a short

difference of somebody else claims the stock you can't let them off, you have to buy it in. These buy-ins took place during the year. As I pointed out, the only time I was aware of any sell outs is when Mr. Speicher told me there were going to be sales in December. What the effect was on net worth or net capital of the total buy-ins or sell-outs during this period I just don't know.

Q I am talking only about this period, after the 16th and before the first of the year, and I am asking you whether you were told that there would be a substantial increment to net worth as a result of this, as distinguished from capital?

THE COURT: He has alerady answered that, hasn't he?

A I was not.

Q Mr. Lill, a movement in the market doesn't affect the amount of the claim of the customer for a long security which is liquidated, which turns out to have been liquidated improperly, is that right?

A That's right. The customer claim is usually for the shares.

Q That's right.

Well, now --

THE COURT: Mr. Camhy, direct yourself to the witness.

Q Is the customer's claim for the value of the shares at the time he bought them or for the shares?

A For the shares generally.

Q If there is a down in the shares is the claim for the original price of the shares or for the lower price?

A This is a securities difference. The customer may not even be aware that it exists. He just some day asks for a stock, and he is delivered his stock. I don't think value enters into his claim.

Q Upside there is a risk because if the stock goes up and you have to give him the stock you may have to go out and buy it at a higher price, isn't that right?

A Only if the customer claims it and you did not differentiate when it was claimed.

Q If you had sold it when you were liquidating differences and then the customer came forth you would have to go out and buy it for him, wouldn't you?

A But you could still deliver it when he asks for it, in which case the customer has not been exposed to market risk. He has asked for the stock

and it's delivered in normal course. Whether or not you sold it out or bought it in, that doesn't affect the customer's claim.

THE COURT: I am really having difficulty seeing, though it is early, how any of these general questions have any relation to this case. Unless you are going to show that something specific happened in this regard.

MR. CAMHY: Your Honor, I don't have any more questions along those lines, but I have one or two more questions.

THE COURT: At the risk of engendering some more questions, Mr. Lill, I would like to know this: I am now talking about the 325 rule, and its enforcement. You indicated that, I think it was prior to 1970, that the stock exchange handled this matter on a case by case basis.

THE WITNESS: Yes.

THE COURT: Thereafter there was a particular formula which had to be applied. Am I correct so far?

THE WITNESS: With respect to the differences, yes, sir.

THE COURT: What I want to know is, was

there any standard that you know of that was applied in 1969?

THE WITNESS: No,your Honor. It was truly a case by case basis depending upon the facts and circumstances of each case.

THE COURT: And they utilized their discretion in each particular case?

THE WITNESS: Yes, your Honor.

BY MR. CAMHY:

Q Mr. Lill, could you find the material inadequacies letter of 1970?

The material inadequacies letter of November 25, 1970, your references in the first paragraph to differences which appear to have some relationship to 1969 items, those references, were they to duPont items?

A (No response)

Q They weren't to Hirsch items or Glore Forgan items, were they?

A I couldn't identify -- certain of those items -- you say, though, most of these differences were discovered in 1970, many appear to have originated in 1969. If they originated in 1969, they did not relate to Hirsch items, only duPont.

Q In terms of size, wasn't Hirsch of very much

smaller size than duPont?

A Yes, sir.

Q And Glore Forgan was also substantially smaller than duPont?

A Yes, sir.

MR. CAMHY: I think that concludes my redirect.

THE COURT: Thank you, Mr. Camhy.

Mr. Lill, you may step down.

(Witness excused)

THE COURT: We will take a recess. I have to take another matter so it may be 15 or 20 minutes before we resume.

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THE COURT. Mr. Camhy, call your next witness.

MR. CAMHY: I call Paul Chenet..

P A U L J. C H E N E T, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Chenet, what is your present occupation?

A Principal examiner in the field examinations department regulation surveillance division New York Stock Exchange.

Q What was your occupation during the period 1969 and 1970?

A I was a member firm coordinator.

Q What did that involve?

A That involved the general supervision and liaison with an alphabetical group of member organizations.

Q Were you coordinating surveillance of those organizations?

A Yes, that would be included.

Q Was one of the member firms that you were coordinating duPont?

A It was.

Q What did coordinating involve?

A General supervision over the financial operational

affairs and problems of the individual firms. Liaison with the firm and eventually we became a clearing house for all of the infom ation that the exchange had relative to these firms.

Q Was that true during the latter part of 1969 and 1970?

A It was.

Q To whom were you responsible, Mr. Chenet?

A During those of this period I was responsible to Mr. Fred Stock.

Q What was his title?

A I believe he was an assistant vice president.

Q Was Mr. Bishop in this organization at that time?

A He was.

Q What was his role?

A He was Mr. Stock's superior with the title of vice president in charge of the department of member firms.

MR. CAMHY: Exhibits 123 and 251. We are going to get those for your Honor, they are not up there.

Q Would you look at these two exhibits, Mr. Chenet (handing)? And I ask you whether the letter which is dated April 15, 1970, marked as Exhibit 251 is in response to the memorandum which is dated 2/2/70 which is marked Exhibit 123. It recites that it is.

A I will agree.

Q Do you recall that Exhibit 123 was prepared at the exchange?

A It was.

Q Did you review it before it was sent out?

A I did.

Q And to the best of your knowledge was it accurate at the time you prepared it?

A It was.

MR. CAMHY: May we have that marked in evidence please?

MR. HYDE: Received in evidence?

MR. CAMHY: Yes, received. I offer it.

MR. HYDE: Is this offered with respect to Haskins & Sells?

MR. CAMHY: Yes, it is.

MR. HYDE: I object, your Honor. I object with respect to Haskins & Sells on the grounds that no foundation is shown with respect to that defendant.

MR. CAMHY: Your Honor, I am not suggesting that Haskins knew the memorandum or saw it or knew even of its content. What I am asking to do is prove the content through this witness as refreshing his recollection of the facts and then proving the facts--

THE COURT: Well, as I understand it your theory is that whatever conditions are described to you that Haskins & Sells were aware of them, is that correct?

MR. CAMHY: Some of them they were. But I am not suggesting that this is a binding admission on the part of Haskins & Sells.

THE COURT: All right. At any event the objection is overruled. Proceed.

xx (Plaintiffs' Exhibit 123 received in evidence.)

Q Would you look at Exhibit 251 please? This is the answer you received to 123, is that correct?

A Yes.

MR. CAMHY: I offer that, your Honor, into evidence.

MR. BROOKS: For what purpose?

MR. CAMHY: For the purpose of showing the state of the exchange's knowledge of the facts.

MR. HYDE: Then it is not offered as to Haskins & Sells?

MR. BROOKS: I have no objection to this coming in as a letter received by the New York Stock Exchange--

THE COURT: Well, all right, Mr. Brooks, if you have no objection, fine.

MR. BROOKS: But if he is offering it for the truth of what it says as being binding on the New York

Stock Exchange I don't think he can prove that from Mr. Chenet. He has to talk to the author of the letter.

THE COURT: Well, as I understand it the purpose of the offer, and it is received as to the stock exchange for that, that whatever this letter reflects, these two documents, that they were aware of of these conditions. It is received for that purpose. Obviously the letter cannot -- the response of duPont cannot be received against Haskins & Sells.

MR. HYDE: Thank you.

(Plaintiffs' Exhibit 251 received in evidence.)

MR. CAMHY: Your Honor, may I request that this be read? The letter itself is so long that I think it would be unduly long and I will pick out points in the letter. But I think the whole memorandum is of very much importance to the case.

THE COURT: Will be read for what purpose? I am going to have to read it.

MR. CAMHY: May I read it aloud or--

THE COURT: No, I don't see any purpose to be served in that. I absorb better with my eyes.

MR. CAMHY: Thank you, your Honor. Would you prefer to do that later or now? Or should I go on?

THE COURT: If you want to ask him some questions

and get it on the record of course you may.

MR. CAMHY: He's already testified that--

THE COURT: There is no purpose going to be served by reading something I am going to have to read later. If you want to bring my attention to a particular--

MR. CAMHY: Yes. Why don't I just do that?

THE COURT: I understand that.

MR. CAMHY: The memorandum points out on page 1-- no, the question asked by the memorandum is, did Francis I. duPont violate Exchange Rule 325--

THE COURT: I think what -- I didn't mean that. Just refer me to a page and item that you think I ought to look at with particular interest.

MR. CAMHY: On page 1, top, a reference to an earlier violation in respect of recording keeping.

THE COURT: All right.

MR. CAMHY: On page 3, reference to --

MR. BROOKS: Excuse me. What document are you referring to?

MR. CAMHY: The memorandum on page 2, top, reference to an earlier violation with respect to record keeping.

MR. BROOKS: I believe you said on one, top.

MR. CAMHY: I'm sorry.

MR. BROOKS: And I didn't find that.

MR. CAMHY: On page 3 references to violations, or capital positions as of June and July in excess of rule requirements.

THE COURT: All right.

MR. CAMHY: On page 4 and beginning at the bottom of page 3 and into page 4 references to the audit and what the exchange review of the audit disclosed.

THE COURT: All right.

MR. CAMHY: And particularly a first review -- no, excuse me, a review which showed --

THE COURT: Mr. Camhy, this is really a waste of time. What you are telling me is you want me to read the whole document and I will do that.

MR. CAMHY: All right, thank you.

THE COURT: All right.

MR. CAMHY: May I just point out one thing. There is a ratio of 76,128 computed in that audit review.

THE COURT: All right.

BY MR. CAMHY:

Q Now would you turn to Exhibit 251, Mr. Chenet, and do you see where it is stated there on page 7 "duPont reports to the exchange," referring to this historically in the center of the third paragraph "Upon learning of the

above mentioned charges against net capital asserted by your department Messrs. Speicher and Gay of FID met with you to discuss the remedial steps" etc. "They reported to a meeting of the finance committee . . . that with your approval and even at your suggestion a program of liquidation should be undertaken to reduce the firm's overages. The completion of this program together with the additional capital raised by duPont resulted in the compliance of the firm with Rule 325 on December 24, 1969 as indicated in the staff memorandum."

Now you received and reviewed this letter, didn't you, Mr. Chenet?

A Yes. After Mr. Bishop had received it. It was passed on to me.

Q Had Mr. Bishop seen the memorandum of February 2nd, 1970?

A Yes.

MR. CAMHY: Now we go to Exhibits 124,125,126, 127, 128, 130, 132, 133. Your Honor, these exhibits I will ask the witness to identify, in each case they have to do with what the exchange knew abour duPont resulting from the events of the previous approximately one year prior to the merger. Some of them are referred to in Mr. Chenet's memorandum of February 2, 1970.

Q Mr. Chenet, would you look at Exhibit 124? Is that a memorandum which was generated within the exchange? In one of the departments under your coordination?

A Yes.

MR. CAMHY: I offer Exhibit 124.

MR. BROOKS: No objection.

MR. HYDE: I object with respect to Haskins & Sells if it is offered against Haskins & Sells.

MR. CAMHY: It is not offered against Haskins & Sells.

THE COURT: All right.

xx (Plaintiffs' Exhibit 124 received in evidence.)

Q Would you look at Exhibit 125, Mr. Chenet? Is that a letter which the exchange received in the course of its surveillance from from F.I. duPont?

A Yes.

MR. CAMHY: I offer Exhibit 125.

MR. HYDE: Is this offered against Haskins & Sells?

MR. CAMHY: No.

MR. BROOKS: No objection.

xx (Plaintiffs' Exhibit 125 received in evidence.)

Q Would you look at Exhibit 126 please. Is this a handwritten memorandum I believe prepared by Mr. Bishop?

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MR. BROOKS: Isn't a better question whether this can be identified by Mr. Bishop's --

MR. CAMHY: I am trying to shorten this. We did it--

THE COURT: The problem with this is I can't read it.

Q Mr. Chenet, will you read it please? Before you do can you identify it?

A It appears to be a memorandum in Mr. Bishop's handwriting, yes, sir.

MR. CAMHY: Your Honor, I offer it and then could he read it please?

MR. HYDE: Is this offered against Haskins & Sells?

MR. CAMHY: No.

THE COURT: All right.

A It is dated 3/13/69.

THE COURT: I can read that.

A Also, please have an office inspector go to duPont to check their complaint handling procedures and backlog. SEC is bringing--

Q "PVT" I believe private.

A --"private proceedings against firm for poor handling of complaints. The New York SEC office should be able to provide information, info. Would like to consider

appropriate" -- it looks like institution if complaint handling is inadequate with the initial "B".

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Q Would you look at Exhibit 127, please?

Is that a letter sent by the exchange to duPont at or about the time indicated?

A It is.

MR. CAMHY: Your Honor, I offer it.

MR. HYDE: Is that offered against Haskins & Sells?

MR. CAMHY: No, not against Haskins & Sells.

MR. BROOKS: Which number are you now offering?

MR. CAMHY: 127.

MR. BROOKS: Have youoffered yet 126?

MR. CAMHY: I believe I did.

MR. BROOKS: Has it been received?

THE COURT: Yes.

MR. BROOKS: I have no objection to 127.

(Plaintiffs' Exhibit 127 was received in evidence)

Q If you would look at 128, please. Is this a letter sent by the New York Stock Exchange at or about the date indicated, to Irving Pollack, director of trading and markets Securities and Exchange Commission?

A It is.

MR. CAMHY: I offer it against the stock

exchange, your Honor.

MR. BROOKS: I have no objection.

(Plaintiffs' Exhibit 128 was received in evidence)

Q Exhibit 129 seems to be the text of certain remarks by the chairman of the exchange. On April 10, 1969.

MR. BROOKS: I fail to see how it is supposed to be by the chairman of the exchange.

MR. CAMHY: It says, I as chairman --

THE COURT: It says I as chairman do so censure your firm.

MR. BROOKS: It doesn't say chairman of the exchange.

MR. CAMHY: I am sorry, maybe chairman of the meeting. It's the text of some official censure.

MR. BROOKS: Why don't we ask the witness if he knows what it is.

Q Do you know what it is, Mr. Chenet?

A It appears to be the text of the censure that was delivered to duPont firm and partners on or about this date.

MR. CAMHY: I offer it.

MR. HYDE: As against Haskins & Sells?

MR. CAMHY: No, against the exchange only.

MR. BROOKS: No objection.

(Plaintiffs' Exhibit 129 was received in evidence)

Q Will you look at Exhibit 130, please. Is this a memorandum dated 5/15/69 prepared by a Mr. King on the staff of the exchange?

MR. BROOKS: Is counsel simply asking Mr. Chenet to read the memo or is he asking him if he's seen this before or can he tell us --

Q Can you tell us whether this is an authentic document from the files of the exchange?

A Yes, it appears to be. Yes.

Q And it deals with the subject of duPont's systems and procedures?

A Insofar as customers' complaints are concerned, I believe.

MR. CAMHY: I offer it, your Honor.

MR. BROOKS: No objection.

MR. HYDE: Against Haskins & Sells?

MR. CAMHY: Against the exchange only.

(Plaintiffs' Exhibit 130 was received in evidence)

Q Did you see this memorandum at or about the

time it was prepared, Mr. Chenet?

A I don't recall having seen this.

Q Did you see it sometime after it was prepared but prior to the merger of Hirsch and duPont, sometime in the months following the merger?

A No, sir, I don't recall having seen it during that period.

Q Do you remember any time when you saw it?

A I do not.

MR. CAMHY: Your Honor, it being in evidence I would just like to refer to a couple of portions of it, if I may.

THE WITNESS: May I amend my last answer?

Q Yes.

A I see that my initials are on the upper left-hand corner designating that this memorandum be put in our file so at sometime or other I apparently did see it. But I don't recall it.

MR. CAMHY: On page 6,your Honor, toward the bottom, at the very bottom of page 6 the paragraph starts and continues over to the next page. We will at a later time make certain contentions about the failure of the firm to deliver out securities and what the implications of that were.

Q Would you look at Exhibit 131, please? Is this a letter prepared by the exchange and sent to Francis I duPont on or about the date set forth on it?

A It is.

MR. CAMHY: I offer it, your Honor.

MR. BROOKS: No objection.

MR. HYDE: Not against Haskins & Sells.

MR. CAMHY: Not against Haskins & Sells.

(Plaintiffs' Exhibit 131 was received in evidence)

THE COURT: Beginning tomorrow I want this procedure to change. We have spent one half hour merely having Mr. Chenet identify documents that you and Mr. Brooks could very well have gotten identified before. I am not having that from now on. If there is going to be no question about the authenticity of documents I want that done. There is no point in having the man here merely to identify the documents.

MR. CAMHY: Your Honor, I did try to do that, but --

THE COURT: Not only Mr. Brooks but Mr. Hyde as well. Deal with it. For the remainder of this trial I am not going to sit here while somebody sits down and identifies documents that nobody objects to.

MR. CAMHY: Your Honor, I did endeavor to do that before the trial started.

THE COURT: Well, you and Mr. Brooks and Mr. Hyde make a more successful attempt to avoid that beginning tomorrow.

MR. CAMHY: Your Honor will note that these have all been reproduced, premarked and sent to them by at least a week before then with a request that we be able to do this and we went to great effort to do that, your Honor, and I will go further.

THE COURT: All right, let's proceed.

MR. CAMHY: Thank you, your Honor.

Now, Mr. Brooks will we have any problem on 132 and 133?

MR. BROOKS: On authenticity, Mr. Camhy.

MR. CAMHY: That is that they were prepared in the exchange. In which case I offer them, your Honor. They relate to the processing of duPont at the exchange and they are not offered against Haskins & Sells.

MR. BROOKS: Some of them were not prepared at the exchange. They are directed to the exchange.

MR. CAMHY: Or received by the exchange.

MR. BROOKS: Received by the exchange. They are authentic.

THE COURT: All right, 132, 133 and 133A received in evidence.

(Plaintiffs' Exhibits 132, 133 and 133A were received in evidence)

MR. CAMHY: Your Honor, I believe that Exhibit 134 and Exhibit 137 have already been introduced into evidence through Mr. Lill and I would like Mr. Chenet to look at them and just acknowledge that he saw these at or about the time because his seeing them is of some interest in this matter. (handing)

MR. BROOKS: I don't see anything in the record about 134, Mr. Camhy.

MR. HYDE: Do you mean 135? I believe Mr. Lill was examined about 135 and 137.

MR. CAMHY: 137 is in, isn't it?

MR. BROOKS: Yes.

MR. CAMHY: All right, fine.

Q Would you look at Exhibit 134, please, and tell me whether this is a memorandum prepared in the exchange (handing).

A It is.

Q And did you see it at the time it was written or shortly thereafter?

A Shortly thereafter.

Q Now, here's a letter, Exhibit 137 from the exchange to Francis I. duPont, which is in evidence. It is dated November 12, 1969. My question is what role if any did you play in connection with that letter? Did you review it before it was sent?

A Not before, no, sir.

Q Did you see it after it was sent?

A I did.

Q Shortly after it was sent?

A Shortly after.

MR. CAMHY: Thank you. I offer Exhibit 134.

MR. HYDE: Not against Haskins & Sells?

MR. CAMHY: No, as against the stock exchange.

MR. BROOKS: No objection.

(Plaintiffs' Exhibit 134 was received in evidence)

MR. CAMHY: Can wehave Exhibits 139, 140, 216. I intend to offer all three, Mr. Brooks, unless you have some objection.

MR. BROOKS: I have no objection to the authenticity of the documents. Exhibit 140 was a document sent to the stock exchange. I have no objection to it as an authentic document received by the stock exchange. I don't know anything about the handwriting

that appears on the various documents so I can't consent to the handwriting.

MR. CAMHY: The handwriting was on them when I got them from you, Mr. Brooks.

MR. BROOKS: I don't dispute that.

MR. HYDE: I take it these are not offered as against Haskins & Sells.

MR. CAMHY: No, they are not.

I offer them. May they be received?

MR. BROOKS: I have stated my objection. I don't object to the documents.

THE COURT: All right.

(Plaintiffs' Exhibits 139, 140 and 216 were received in evidence)

THE COURT: What am I supposed to gain by Exhibit 216, which is a report of rumors and gossip? What am I supposed to be enlightened on that on?

MR. CAMHY: Your Honor, the date of this is December 23, 1969, and the question is what was the exchange alerted to or knew of at the time it eas having these negotiations with duPont and Haskins & Sells. What other information or input was it getting.

THE COURT: All right.

MR. CAMHY: Exhibits 147, 148 and 158.

I offer these against the exchange.

MR. BROOKS: No objection to authenticity.

THE COURT: All right.

(Plaintiffs' Exhibits 147, 148 and 158 were received in evidence)

MR. CAMHY: Exhibits 145 and 150. I am going to offer them and then I would like to question Mr. Chenet about them. If you have any objection as to their going in --

MR. BROOKS: I don't dispute they are authentic.

MR. CAMHY: I offer them into evidence.

MR. HYDE: Against?

MR. CAMHY: Against the exchange only.

MR. BROOKS: I think if counsel is going to question the witness, your Honor, he should do that then offer them.

Q Mr. Chenet, would you look at Exhibit 145? Is this a memorandum that you made?

A It is.

Q Does it reflect a conversation you had with Mr. Sam Gay at Francis duPont?

A It does.

Q Didyou advise Mr. Bishop of this conversation

or furnish him with a copy of the memorandum?

A Normally I would have taken one action or the other, yes.

MR. CAMHY: Your Honor, I call your attention to the second paragraph.

MR. BROOKS: Your Honor, the answer was responsive, and I move to strike it. It tells us nothing about the answer of whether it was sent to Mr. Bishop or not. It could have been they have no normal practice.

THE COURT: Well, what I gather from the answer, Mr. Brooks, Mr. Chenet is indicating that he did send the document to Mr. Bishop.

MR. BROOKS: What he told us is normal practice would either be to -- I understood the question to be, A or B. I think he told us his normal practice would be to do either A or B. He didn't tell us that he sent this memorandum, and he didn't tell us whether it was A or B.

THE COURT: Well, I am sorry, I only heard A, I didn't hear B.

Would you read the answer back?

MR. CAMHY: Your Honor, may I rephrase the question?

THE COURT: All right.

BY MR. CAMHY:

Q Would it have been your normal practice to make a copy of this memorandum available to Mr. Bishop?

A Not necessarily, no, sir.

Q Would it have been your normal practice to

either do that or tell him about it contents?

A Yes, I kept him generally aware of items of this nature. Yes.

MR. CAMHY: I offer the document in evidence.

THE COURT: You don't have any recollection of having talked to Mr. Bishop about this or having given him this document?

THE WITNESS: Not specifically, no, your Honor.

MR. CAMHY: I offer it into evidence.

MR. BROOKS: No objection.

THE COURT: All right.

(Plaintiffs's Exhibit 145 was received in evidence.)

xx MR. CAMHY: I have called the Court's attention to the second full paragraph of the memorandum dealing with achieving capital compliance with a liquidation of differences, long securities in difference accounts.

Q Would you look at Exhibit 150, Mr. Chenet?

Is this a letter which you received from Francis I. duPont, or which Mr. Bishop did, or the exchange did?

A It is.

MR. CAMHY: I offer it into evidence.

MR. BROOKS: No objection.

THE COURT: All right.

(Plaintiffs' Exhibit 150 was received in evidence.)

xx Q Would you look at Exhibit 153?

Mr. Chenet, is that your handwriting at the bottom of Exhibit 153?

A It is.

Q Is this a letter which you received from duPont? A copy of a letter from the Toronto Exchange --

A A copy of a letter received by duPont, yes.

MR. CAMHY: I offer it.

MR. BROOKS: No objection.

(Plaintiffs' Exhibit 153 was received in evidence.)

xx MR. CAMHY: This is not against the Hoskins ~~Exchange~~.

I call the Court's attention to the handwriting at the bottom of the page. I think I can read the handwriting.

Does the Court have any trouble with the handwriting?

THE COURT: Mr. Chenet's handwriting is a little clearer.

MR. CAMHY: Could we have Exhibits 159, 159-A and 159-B?

Q Mr. Chenet, do you recognize these documents (handing)?

A I know what they are, yes.

Q Are these the computations of adjustments to the computation of capital made by the exchange staff?

A They are not the computations themselves. They contain summaries of the computation.

Q And the date of this computation is as at September 28th -- excuse me. I may have offered you the wrong group. The date is at January 30, 1970.

A Yes, sir.

MR. CAMHY: I offer them against the exchange only.

MR. BROOKS: May I ask a question, your Honor?

THE COURT: Surely.

MR. BROOKS: Mr. Chenet, when you said you know what they are, does that mean that you know they are documents from the files of the exchange?

THE WITNESS: Yes.

MR. BROOKS: No objection.

(Plaintiffs' Exhibits 159, 159-A and 159-B were received in evidence.)

xx THE COURT: The date is January 30th.

Are these summaries as you indicated of computa-

tions that were made earlier, or is the date January 30th the date that the original computations were made?

MR. CAMHY: Your Honor, may I respond to that? It arose --

THE COURT: I mean, I would prefer him to respond to it.

MR. CAMHY: Except that it kind of arose from an error of my picking them up.

I was intending to offer a different group.

THE COURT: Well, I think maybe Mr. Chenet may still be able to answer it.

Can you?

THE WITNESS: Yes, sir.

The date January 30th is the date as of which the computations were made.

THE COURT: All right.

MR. CAMNY: May we have Exhibit 143?

Q Mr. Chenet, do you recognize this exhibit (handing)?

A I do.

Q Is this the summary of the computation made by the exchange on September 28th -- as at the September 28th audit date?

A This is a summary of the capital analysis

prepared by the exchange as of that date.

MR. CAMHY: I offer it.

MR. BROOKS: No objection.

MR. CAMHY: I offer it as against the exchange only.

THE COURT: All right.

(Plaintiffs' Exhibit 143 was received in evidence.)

xx BY MR. CAMHY:

Q Mr. Chenet, can you tell us who Mr. Dominach was?

A Mr. Dominach was the special operations co-ordinator hired by the exchange, I believe some time early in 1970.

Q Was he assigned to play a role in thee Hirsch-duPont merger with Glore Forgan?

A Yes, he was.

Q Was it his job to in part oversee the mechanics of the putting together of those firms and report on it?

A I believe it was, yes, sir.

Q Can you tell us who Mr. Arning was?

A Mr. Arning was at this time was the vice-president of the Stock Exchange. Probably a senior vice-president of the Stock Exchange.

Q Was Mr. Arning taking any role in connection with duPont during the spring of 1970?

A Yes, he was.

Q Can you tell us what that role was?

A Well, as senior vice-president I'm sure that all information regarding member firms would eventually filter its way through Mr. Arning's office.

Q Do you know whether he was concerning himself during this period with the capital problems of several member firms including duPont?

A He was.

MR. BROOKS: I object to the question and move to strike the answer. There is no demonstration of Mr. Chenet's competency to tell us what Mr. Arning was concerning himself with.

THE COURT: The objection is overruled. It has been answered.

Q Mr. Chenet, would you look at Exhibit 167.

Can you tell us whether this is from the exchange's files?

A It is.

MR. CAMHY: Mr. Brooks, I know that on deposition Mr. Chenet said that this was not one which crossed his desk. On the other hand, it was identified by Mr.

Arning.

MR. BROOKS: Do you plan to call Mr. Arning?

MR. CAMHY: Yes, I do.

MR. BROOKS: I prefer that he identify it.

MR. CAMHY: I wish to use the text of this to examine the witness with respect to certain matter that I examined him on on that deposition.

THE COURT: This witness?

MR. CAMHY: This witness, yes.

MR. HYDE: This is not offered against Haskins & Sells?

MR. CAMHY: That's right, it is not offered against Haskins & Sells.

MR. BROOKS: I have no objection, your Honor.

THE COURT: All right. For that purpose it will be received.

MR. CAMHY: Thank you, your Honor.

(Plaintiffs' Exhibit 167 was received in evidence.)

xx MR. CAMHY: Does the witness have a copy of it?

THE WITNESS: Yes.

Q Mr. Chenet, on examination before trial I asked you --

MR. CAMHY: Strike that.

Q I ask you now, do you agree, or, did you agree or disagree with the view set forth in the very first paragraph of this memorandum?

MR. BROOKS: Your Honor, I object.

Mr. Camhy has just stipulated that Mr. Chenet did not see this memorandum contemporaneously. If he wants to ask him a question he should do it without reference to a memorandum.

THE COURT: I think that's right.

MR. CAMHY: Well, your Honor, I asked him -- all right.

Q Mr. Chenet, was the substance of these views communicated to you by Mr. Dominach at or about that time orally?

A In general, yes.

Q Now looking at that, looking at the content of the memorandum can you say now that you agreed or disagreed with those views in the first paragraph?

MR. BROOKS: Your Honor, I think we should have testimony as to what was conveyed to the witness orally at the time and not try to do this by reference to a memorandum --

THE COURT: I'm entirely in agreement, Mr. Brooks, because I have no way of knowing what he has agreed

to and what he is talking about.

MR. CAMHY: Well, your Honor, on deposition I showed him the memorandum and asked him, "I ask you whether you agreed or disagreed with the view set forth in the first pagraph," and I got an answer.

May I read that answer?

THE COURT: Why don't you ask him, put a question to him that covers the items in the first paragraph and ask him does that accord with his views at the time and during his investigation. I assume he was a part of the investigating team.

Q Mr. Chenet, based on your evaluation of the duPont situation at that time would you agree or not agree with the recommendation that the merger be delayed until, one, assurances of additional capital are provided and, two, that duPont's operations exposure be completely identified and substantially reduced?

A Speaking as duPont's coordinator I would agree with number two.

Q That is that the merger be delayed until duPont's operations exposure be completely identified and substantially reduced?

A I would probably quarrel with the words "completely identified". I don't know -- but certainly

substantially reduced.

Q Did you communicate that point of view to anybody at the time?

A I had discussion with Mr. Dominach and also with Mr. Stock.

Q Did you communicate that point of view to them in those discussions?

A I did.

Q Did you tell Mr. Stock that you had received the same communication from Mr. Dominach?

A I am not sure I understand the question.

Q When you spoke to Mr. Stock did you tell him --

THE COURT: Wait, please. We are beginning to throw a great many names around here and I'm not too sure that I know what the positions of these people are.

Q Mr. Chenet, would you tell the Court who Mr. Stock was?

A Mr. Stock was my immediate superior.

Q And may we have his title?

A He was an assistant vice-president.

THE COURT: All right.

I suppose he testified to that before. You reported to him, as I understand it, about your investigation?

THE WITNESS: Yes, your Honor.

THE COURT: In terms of duPont.

THE WITNESS: In general terms, yes, sir.

THE COURT: All right. Who was the other person?

MR. CAMHY: Mr. Dominach --

THE COURT: I know that, you mentioned somebody else. I think I know who Mr. Dominach is. I remember that testimony.

Was there a Mr. Ash that you mentioned?

MR. CAMHY: Mr. Arning.

THE COURT: All right. I thought you had mentioned someone else as well. All right.

Well, the hour is late, ladies and gentlemen. We will adjourn until tomorrow morning at 10 o'clock.

(Adjourned to Thursday, June 19, 1975, at 10.00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Edward J. Lill (Resumed)	94	166	236	
Paul J. Chenet	251			

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
244		127
23,28,113		146
213		151
123		254
251		255
124,125		259
127		261
128		262
129,130		263
131		265
132,133,133A		267
134		268
139,140,216		269
147,148,158		270
145		273
150,153		274
159,159-A,159-B		275
143		277

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
167		279
Defendant Haskins & Sells		
A, B		170
P	171	171
D, E		177
G, H, C		180
I, J		181
K, L		183
M		184
N, O		185

HOWARD C. HIRSCH, et al.
vs.
HASKINS & SELLS, INC., et al.

June 19, 1975,
10 A.M.

--

MR. CAMHY: There is one witness, Mr. Speicher, I intended to call, and his attorney has an important professional problem this afternoon, and Mr. Speicher has a problem tomorrow. It might interfere with things if he had to wait until tomorrow.

We all consent, as I understand it, to his being taken out of turn now if your Honor will permit us to do so.

THE COURT: Since all I have heard from Mr. Chenet is the identification of exhibits I don't think it will confuse me at all.

The answer is "Yes."

MR. BROOKS: If I may make a point, in response to your directive yesterday Mr. Camhy and I have caucused about exhibits. Mr. Camhy gave me a lengthy list, and I have reviewed each exhibit, and have some problems as to some and no problems as to others.

There is a long list that are exhibits offered by Mr. Speicher, weekly capital computations of the duPont firm which were sent to the exchange.

We take the position if Mr. Camhy wants to introduce these exhibits he should introduce them at the time Mr. Speicher is on the stand, because he is the best person to question about what the documents mean, and when he wrote them and how he wrote them, rather than later through some other exchange witness who while they might have found a document in the exchange's file has very little probative basis.

Mr. Speicher is coming on the stand now, and I wanted to make this point at this time.

THE COURT: I agree with that. It seems to me that whatever objections you have I would be able to deal with them more rationally if the man who knows about the documents is on the witness stand at the time you make your objection.

MR. BROOKS: I quite agree. I had suggested this to Mr. Camhy and he was of the opposite view. That's why I wanted my position to be on the record.

MR. CAMHY Because of the pressure of the time I will not take the time of the court to argue the point.

May we have Mr. Speicher now, please.

MR. BROOKS: I also would like to say, your Honor, subject to your wishes, Mr. Gillespie will handle our responsibilities as to Mr. Speicher both in objecting and

any cross-examination we may have.

THE COURT: I have no difficulty with that, gentlemen, those of you who are assisted by counsel, except for the fact I want it clear, though, we will have one lawyer handling one witness.

MR. BROOKS: Yes, sir. We understand that.

M I L T O N A. S P E I C H E R, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Speicher, what is your position?

A Presently I am the liquidator of the old firm F. I. duPont, Glore Forgan & Co.

Q What was your position in the latter part of 1969, early part of 1970?

A I was a senior partner. My duties included tax work for the firm and for its corporate subsidiaries. The corporate subsidiaries I oversaw, and I was an adviser to the office of the managing partner.

THE COURT: I'm sorry, Mr. Speicher. I didn't hear that. What firm were you a senior partner in?

THE WITNESS: F.I. duPont, Glore Forgan & Co.

THE COURT: All right, Mr. Camhy.

Q Are you familiar with transactions at the end of 1969 and the very early part of 1970 in which certain securities differences were liquidated?

A I am.

Q Did this follow a meeting which you had at the exchange at or about December 16, 1969?

A Yes.

Q Were you present at that meeting?

A Yes.

Q Do you recall at that meeting that the subject of discussion was capital compliance based on the Haskins & Sells audit as at September 28, 1969?

A It concerned that as well as other matters.

Q Was there under discussion the question of additional charges to be made in computing capital based on that audit?

A Yes.

Q Did the exchange assert that there were certain substantial additional charges that they intended to make?

A Yes.

Q Was one of these an item called dividends on securities fail to receive?

A Yes.

Q Of approximately 1.8 million dollars?

A No. Wrong figure. Six million odd.

Q No, I am not talking about what was liquidated. I am talking about the charge they intended to make.

A Yes.

Q Eight million one.

A Correct.

Q That figure came from the Haskins & Sells audit, did it not?

A Yes.

Q There was another figure in the Haskins & Sells audit which was called dividend differences of approximately one million eight?

A Yes.

Q Do you recall that there was discussion of that particular charge, also?

A Yes.

Q As I recall, that charge was resolved by a reclassification of the item?

A After Haskins & Sells wrote a particular adjustment to it, or a statement to it. I have forgotten the exact facts.

Q Which in effect adjusted their classification of the item as at the audit date?

A It changed its status, yes.

THE COURT: Mr. Camhy, I am not clear on this. I thought the eight million you referred to it as coming from the Haskins & Sells audit showing what, a difference? What I don't understand is you referred to it as a charge. I thought the charge was a penalty that the stock exchange was going to impose.

MR. CAMHY: The eight million one, as I understand it, and as I understand the witness has testified to it, was something called dividends on securities failed to receive. And it was an item which the exchange was going to burden capital with so as to reduce capital by that amount.

Q Is that correct, Mr. Speicher?

A Yes.

Q Following that discussion, did the duPont firm proceed to liquidate approximately six million dollars in long difference securities?

A Yes.

Q That liquidation resulted, I presume, in certain cash proceeds?

A Yes.

Q Was the cash proceeds used to buy in the items which formed part of these capital charges?

A Yes.

Q Approximately how much of the proceeds was used for that purpose?

A In the area of four million plus.

Q The balance of the six million proceeds, was that simply infused into the general cash funds of the company?

A Yes.

Q Did that have its concomitant effect on the company's P and L?

A Did it what?

Q Did it have its consequent effect on P and L?

A Yes.

Q To that extent thereby improving the profit or perhaps reducing the loss by approximately two million dollars?

A Yes.

Q And thereby increasing net worth by that amount?

A Yes.

Q What was the effect on capital computation of the six million dollars proceeds? Was that approximately an eight million dollar effect?

A No.

Q What was the effect?

A Six million.

Q Six million?

A Yes.

Q And that reduced your capital deficiency by approximately six million dollars?

A Correct.

Q Were these securities securities in which you had identified a particular -- the long securities sold, were these securities in which you had identified a particular proprietary account of the firm which indicated that the firm owned them in a particular account?

A No, it was not located in a firm proprietary account.

Q As I understand it, these were securities where you did what you considered to be adequate research against your records and found no other claim against them?

A At that time, that's right.

Q Yes. So your position is that you found that you actually had the securities. You checked to make sure it wasn't just a ticket, but really an actual security in the firm's position, is that correct?

A That is my understanding of what was done in the cage, yes, sir.

Q Secondly, it is your understanding that the firm had what they considered an adequate look for the security, for an account in which the security belonged, and found

that they had no such account?

A I don't follow the question.

Q It is your understanding that there was a search for a place belonging to a customer, another broker, some other claim on the stock, against the firm's records, and that they could find no other claim?

A None at that time.

Q This in effect meant that you were, based on your records, over the stock?

A Correct. Before the sale.

Q Excuse me?

A Before the sale.

Q Before the sale.

A Yes.

Q Did you advise the exchange of what you did? the exchange know you were doing this?

A I know they did somewheres between the 16th and the 26th or the 27th.

Q And did Haskins & Sells know you were doing this?

A Yes.

Q And was this done consistent with the instructions or the conversation you had with Mr. Bishop, Mr. Lill, et cetera?

A I believe so.

MR. CAMHY: Your Honor, that's all I have of the witness. You may examine.

(Pause)

THE COURT: What do you plan to do with the exhibits?

MR. CAMHY: I was about to get to that point. I had been distracted. May I have just a moment of argument on the question that Mr. Brooks raised previously.

Each of the exhibits in question is a letter from duPont to the stock exchange informing the exchange of a weekly capital position as computed by duPont.

If I offer these at all I would offer them only to show not the truth of the content of the statement but merely that it had been received by the exchange.

THE COURT: Let me try to shorten it. Mr. Brooks indicated that he had some objections not on authenticity but I gather some other objection to some of those because it would appear to me that as to those exhibits since Mr. Speicher is on the witness stand and I understand he will be able to tell us about them there should be an offer made now. Those he has objection to we can handle later.

MR. CAMHY: I am sure Mr. Brooks will concede his client received them all. What Mr. Brooks wants to do is open the door to a long examination of Mr. Speicher

in my case as to the truth of the content, and I am not offering them for that. I am offering them only to show what the exchange was told, not that what they were told was true. I would keep Mr. Speicher here for an hour on the exhibits, and I would prefer not to have to call him back.

THE COURT: Let me handle it this way. I frankly don't know. Mr. Brooks has raised what would seem to me to be a valid point. I will not allow the examination into the contents of the documents to proceed on your case, if that is going to help you.

MR. CAMHY: I will do my best during cross-examination to pull all of these out to see if we can get them marked now. I don't think it is necessary, because the exchange got every one of them. They came from their file.

MR. BROOKS: I can provide you with the numbers.

THE COURT: The only ones you need to produce now is those on which there is some dispute.

MR. CAMHY: He says every one I have to identify through this witness. There are 52 of them.

MR. BROOKS: I don't have any objection to them being offered in bulk, and Mr. Gillespie has one question on the whole bulk.

THE COURT: All right. I don't see how you can

object to that, Mr. Camhy.

MR. CAMHY: Can you find the exhibits?

MR. BROOKS: I can give you the numbers.

CROSS-EXAMINATION

BY MR. GILLESPIE:

Q Mr. Speicher, yesterday Mr. Lill testified on cross-examination that the security count differences that existed at the time they rendered their opinion in November of 1969 were at various stages of research. Does your recollection accord with that?

A Yes. Sam Gay was the may in charge of the back office, it wasn't my function, but I would be aware there were various stages of completion to any research work being done.

Q Were you aware of any liquidation of long security differences by the firm after the opinion of Haskins & Sells in November of 1969 and prior to the meeting on December 16 at the New York Stock Exchange?

A No.

MR. CAMHY: May I hear the question and answer again, please.

(Record read)

Q Focusing for a moment on the December 16, 1969 meeting, did you understand from Mr. Bishop it would be all right to sell the securities, these long securities, only if you found them to be owned by you?

MR. POLLACK: Objection to the form of the

question.

MR. CAMHY: I join in the objection.

THE COURT: The question is, did you understand from Mr. Bishop that you could only sell these securities after finding that they belonged to you? Is that the question?

MR. GILLESPIE: The question is, your Honor, did you understand from Mr. Bishop at the December 16 meeting that it would be all right to sell the long securities only if you found them to be owned by you.

THE COURT: The objection is overruled.

A He said with research. That's the words he used.

Q Did the nature of the research that was done -- strike that.

To your knowledge, were the long securities that were sold, long security differences that were sold after the December 16 meeting, were these researched prior to their sale?

A There must have been some research done on any one that we sold. The extent of it I wouldn't be able to tell you.

Q Who would be able to tell us the extent of

the research?

A The back office. Probably Sam Gay. Perhaps not. Perhaps somebody working with Sam.

Q Who actually decided to liquidate the securities at Francis I. duPont?

A Immediately after that meeting that you referred to of December 16, Sam Gay and I went back to the office and the finance committee and the policy committee both met together. It was decided at that meeting that we would proceed with the liquidation. There were three of us asked to be in charge of it, myself, Sam Gay and Wally Latour.

Q What procedure did you follow in determining which securities should be liquidated?

A I dind't make selections. I was with the group but I didn't make the selections.

Q You didnot make the selections?

A No.

Q Who did make the selections?

A I am not positive of that.

Q Did the nature --

THE COURT: Wait a minute, Mr. Gillespie. Are you moving away from that point?

MR. GILLESPIE: No, I am not, your Honor.

THE COURT: I was just going to wait until you finished. All right.

Q Did the nature of the research that was done enable you to make any judgment that upon liquidation capital credit could properly be claimed by the firm?

A In light of the conversations we had on the 16th, I would say the answer would be yes.

MR. GILLESPIE: I am finished with that point, your Honor.

THE COURT: Who of the group had the authority to select the particular security, to determine the particular security, that was to be liquidated?

THE WITNESS: There was a -- shall I answer that?

THE COURT: Yes.

THE WITNESS: I wasn't sure if I was supposed to.

THE COURT: I addressed it to you.

THE WITNESS: There was a machine run, an IBM machine run, it must have been a stack of papers so thick, a very thick stack, which the back office had produced, not this minute right after meeting of the finance committee in joint meeting with the policy committee, but sometime after, which had notations on

on them as to the date of research that might have been done. I believe that all three of us had looked at some part of that. As to whether we went -- looked at every one of them and did the picking, I don't believe that is a fact.

THE COURT: In other words, what I understand is that the computer indicated something, and by looking at it you determined it was appropriate to liquidate particular ones.

THE WITNESS: There might be some pencil notations that might have told us not to or told us to.

THE COURT: All right, Mr. Gillespie.

Q At the December 16 meeting, when Mr. Bishop suggested the liquidation of long security differences with research, did you understand what he meant by research?

A I am sure I understood what he meant. I don't know whether I am proper to say this, but there were 29 million of shorts -- of longs at that point, and we were referring to the 29 million and 6 million that would be disposed of, which was about one in four or one in four, something of that order.

So that we weren't talking of disposing of the whole 29 million, but a portion of it only. It was

obvious we didn't have every one of those items researched. I am talking about every one of the 29 million.

Q Of the 29 million?

A Right.

Q But with respect to the ones that you understood that Mr. Bishop was asking you to liquidate, that these would be researched?

A That they were researched as well as we were able to up to that point.

Q To your knowledge, was the research on these long securities that were liquidated between December 16 and December 24 or 26 -- was this research at least in part done prior to December 16?

A I am sure it was on some. Maybe on all.

Q Mr. Speicher, I would like to show you two documents that are marked Defendants' New York Stock Exchange Exhibits B and C for identification.

A Yes.

Q Have you seen these documents before?

A Yes. I have seen at least one of them, because my signature is on one of them.

Q Which one is that, Mr. Speicher?

A B.

MR. GILLESPIE: Your Honor, I would like

to offer Exhibit B in evidence.

MR. CAMHY: I don't understand the relevance at the moment; or how it relates to the cross-examination. I object to it.

THE COURT: I will have to see it.

MR. CAMHY: I want to be clear the document has relevance inthe case and I want to offer it myself at the appropriate time, but I don't know how it relates to cross.

MR. GILLESPIE: It doesn't relate at this point to any direct examination made by Mr. Camhy, but Mr. Camhy invited us to try to put in our case to the extent possible on cross-examination of these witnesses in order to expeditethe Court's time and the time of the case.

MR. CAMHY: That was not an invitation. I merely said I anticipated they would endeavor to do so. I didn't invite them to do so, hardly.

THE COURT: If you are going to offer it, Mr. Camhy, what's the point of this argument? It is received.

(Defendant New York Stock Exchange Exhibit B was received in evidence)

MR. GILLESPIE: It shall be received in

evidence only as against the plaintiffs and not as against Haskins & Sells.

THE COURT: All right.

MR. GILLESPIE: I would draw the Court's attention particularly to part 1, letter H, on the first page where it sets forth the ratio of aggregate indebtedness to net capital for the firm of Francis I. duPont & Company.

Q Now, Mr. Speicher, when you signed this document did you have any reason to believe that it was not true or accurate?

A No.

MR. GILLESPIE: Do you have the documents you intend to offer, Mr. Camhy?

MR. CAMHY: I have this problem. We will pull them all out. If they have to be identified I suppose this is the time to do it. I will pull them all out even though many of them I don't intend to offer.

THE COURT: It's your case.

MR. CAMHY: I know. My point is I don't intend to offer all of them and I am told they have to be identified now, in which case they all have to be pulled out now, and I have to stop and do that, which is going to happen right now, although I may need only

two or three of them. There are 52 of them.

THE COURT: I don't understand what this is all about.

MR. CAMHY: May I show your Honor one of them, please?

THE COURT: Yes.

MR. CAMHY: Your Honor, each week duPont would mail the exchange a letter like that. The only letters that I have, your Honor, of this kind I received from the exchange from their files. The only reason I would offer them, your Honor, is to show not the truth of the content of those letters but rather that that's what the exchange was told at a particular date.

THE COURT: What is the question that you want to ask Mr. Speicher about this?

MR. GILLESPIE: It is our desire since this was signed by Mr. Speicher to determine whether at the time he sent this to the exchange indicating the status of Francis I. duPont, he believed that these were true and accurate descriptions that are contained therein.

THE COURT: You mean he transmitted these with a covering letter to the exchange? These were signed by somebody else.

MR. GILLESPIE: Then he's pulled one that does not belong to Mr. Speicher. The majority of them are signed by Mr. Speicher that were sent to the exchange and these are the ones that we are anxious to have before Mr. Speicher at this time.

THE COURT: Well, all right, I think that they are entitled to ask that question. I don't really

understand. You are wasting time by resisting.

MR. CAMHY: Would you like to ask a simple question, would he say that any weekly computation that he submitted was true?

MR. GILLESPIE: That's all right with me.

MR. CAMHY: That would be all right with me, your Honor, that would save time.

BY MR. GILLESPIE:

Q Mr. Speicher, you signed a series of letters which set forth a weekly basis computation of capital of Francis I. duPont during the late fall and spring 1969 and 1970. Were those capital computations true and accurate to the best of your knowledge at the time you signed them?

A At the time. At the time. The only exception to that would be during an audit while it was being performed there may be something in flux that would be known to be changed but we didn't know the full amount of the change.

Q But these with my reference would have been post the Haskins & Sells audit in the fall of '69.

A Yes.

Q So there would be no exception. Thank you.

MR. GILLESPIE: I have no further questions.

THE COURT: Mr. Hyde.

CROSS-EXAMINATION

BY MR. HYDE:

Q Mr. Speicher, during 1969 or at least the latter half of 1969 were there certain employees of Francis I. duPont who were spending all or almost all of their time attempting to research and resolve securities differences?

A There was a group, I don't know the total number but if I am correct I think it was in excess of 25. The answer is yes.

Q Spending all or almost all their time on this problem of differences, is that correct?

A That's correct.

Q Would it be fair to say that until the time of this meeting with the stock exchange in December, December 16 I believe it is, 1969, that these people concentrated their efforts on the resolution of short differences?

A To a large extent, yes.

Q And that was because a short diffrence represents a claim against the firm, does it not, a potential liability --

A That's correct.

Q And in contrast a long difference is

either a certificate or some indicia o f ownership of a certificate such as a transfer slip, is that correct?

A We were overstocked.

Q You were overstocked. You had more stock --

A That's right.

Q -- than you needed according to your books, is that right?

A That is correct.

Q Now, during the year 1969 had Francis I. duPont bought in qualities of securities in order to cover short positions?

A Yes. I recall that we had at least lost more than four and a half million dollars on liquidation of bad fail to receives and bad fail to deliver items. These resulted from the kind of mixups that Mr. Lill described yesterday. I don't want to take the time to describe them.

Therefore, from time to time we would be short a particular security and if a customer was entitled to get that stock we would have bought in somewheres between the time of that occurrence and the time of the audit.

Q And I think you mentioned the figure four and a half million --

A Of loss.

Q Of loss. During 1969.

A Yes, sir.

Q And that is separate and apart from the four million that you have testified was bought in in December, or after December 16.

A That's correct.

Q So that during the course of the entire year there would have been some eight and a half million, approximately, expended to cover these short differences, is that correct?

A Net loss to the firm on those two items. Buying in the dividends and selling, and liquidation of the bad fail to receive and fail to deliver. At least eight and a half million dollars.

Q You say liquidating bad fail to receive. If I understand what you mean, Mr. Speicher, there will be instances, or there were instances, were there not, where the customer had purchased securities from the firm, those securities had to come from another broker, and he did not deliver them as he was supposed to. That is called a bad fail to receive.

A No, that would be called a fail to receive, not a bad one yet.

Q It would become bad when --

A If we have a wrong name it would become bad if we didn't know the right broker or for a lot of other reasons.

Q You couldn't tell who it was supposed to come from?

A That's right.

Q Then there would come a time after you bought the security it would come in?

A True.

Q And because you didn't have a record of who it should come from you couldn't match the two up?

A That's true.

Q Would you say that that situation was common during this time?

A Very common.

MR. HYDE: I have no further questions.

THE COURT: Mr. Pollack or Mr. Singer?

CROSS-EXAMINATION

BY MR. POLLACK:

Q Mr. Speicher, what is your age?

A I will be 70 in October.

Q How long have you been in the securities business?

A 53 years.

Q Please tell the Court very briefly your background in the securities business. Starting from the beginning.

A After I graduated from high school I became a page on the floor of the New York Stock Exchange. I worked there for two and a half years and was invited to join a firm by the name of Chisholm & Chapman. I went there as an accountant.

I stayed there until 1941, due to the bad business. It merged with Francis I. duPont & Company and I remained with that firm until we went out of business, with the exceptoin of three years during war service, I was in the service.

Q In the year 1969 what was your position with Francis I. duPont & Company?

A I was senior partner. I was in charge of tax work, corporate subsidiaries, advisor to the office of the managing partner and remained in contact with the stock exchange on capital matters.

Q Mr. Speicher, when you say you were senior partner, do you mean to say you were the number one in the firm?

A I was made a senior partner, a senior partner.

There were four at that time if I remember correctly.

Q At any time in 1969 or 1970, to your knowledge, did duPont ever refuse Haskins & Sells access to any of its books and records?

A No.

Q Did Haskins & Sells have unrestricted access to the books and records of duPont?

A Well, while they were doing the audit, surely.

Q At any time in 1969 or 1970 did duPont ever refuse the New York Stock Exchange access to information about duPont?

A No.

Q You had no role in the negotiations with the plaintiffs in their action, did you?

A I had a role in the broken off meeting in either February or March. I attended one meeting at Mundheim's home along with three others of my partners or possibly four of the partners. And when that meeting was -- when a month later or a week later it was terminated, that was the last connection I had with them until the closing date when we were ready to sign.

Q So that in terms of the negotiations that led to the merger of July 2, 1970, you had no part, is that correct?

A That's right.

MR. POLLACK: Thank you.

THE COURT: I am going to be interested in finding out something about how the firm, its internal controls in respect to its research and those other matters. If you are planning to delve into that with some witness I merely want you to know that I am going to be interested in it. If you or Mr. Brooks or Mr. Hyde or Mr. Pollack are going to delve into it, then fine, but otherwise I was about to ask Mr. Speicher some questions.

MR. CAMHY: I am going to ask a few of Mr. Speicher and then depending on Mr. Speicher's answers I may have to call another witness to do the same thing.

MR. POLLACK: If your Honor please, I think that if I may call to the attention of the Court some testimony that Mr. Speicher gave some minutes ago, I believe he said the man who was in charge of research was Mr. Gay, not Mr. Speicher.

THE COURT: All right. And Mr. Gay will be on the witness stand? You are calling Mr. Gay as a witness?

MR. CAMHY: I had planned to call Mr. Gay

depending on the answers I got from Mr. Speicher. I thought perhaps I might be able to avoid it if I got certain answers, and that may also depend on your Honor's position.

THE COURT: Well, I think that Mr. Speicher has indicated as Mr. Pollack has said that the person most knowledgeable about that would be Mr. Gay.

MR. CAMHY: Yes, except Mr. Speicher did make a few statements I would like to ask him about now. May I proceed, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Speicher, do you recall that during the period of the audit and following the audit there was an attempt by both the auditing group and your firm's group to resolve the differences by identifying the particular transactions to which they related and finding the date and the account which involved the error? Was that going on? To eliminate differences by resolution?

A Yes, that was going on.

Q And I gather that what you had by the 16th were situations where you had not been able to specifically nail down in that particular transaction

an account or date where the error took place and identify as a matter of fact, what caused the difference, is that correct?

A The research had been done partially and not completed, we hadn't located whether we were actually owing that stock to somebody else or to another broker.

Q On cross I think you testified that these computer runs showed that you were over the stock --

A That's right.

Q -- which meant that insofar as your records could tell you there was nothing in your records which indicated that there was a claim on the stock.

A That is true.

Q And that meant that insofar as you had ability to search customer accounts you could not find a claim in those accounts.

A That's the machine printed run.

Q Yes.

A Yes.

Q Well, now, you took these from machine printed runs, didn't you?

A That's right.

Q Didn't you show me on deposition two or three machine printed runs?

A I don't think -- I think those were the sales I think, sir.

Q Yes, that's right.

A That's not what I am talking about.

Q I see. So that what you had on that date was what you determined to sell was, a group of securities which to a greater or lesser extent -- what you had to choose from, excuse me, your Honor,was different groups of securities which to a greater or lesser extent indicated the degree to which you had searched your records and the degree to which you were satisfied that your records showed no other claim on the stock.

A I can't specifically answer to that, Mr. Gay probably can, but my opinion is that yes, they were in various stages of research.

Q But the optimum one would have been where the total search had been done and the total search indicated no other claim, is that right? As you understood it.

A Right.

Q And then lesser ones would have indicated a lesser degree of search.

A Not necessarily. Sometimes you may work for a long, long while to find 100 shares and you may stumble bum into, in five minutes and find a thousand

shares.

Q But the ones that were of the best were the ones where you had looked everyplace you thought you could and found no claim against it.

A True.

T2b Q Had you ever liquidated long differences before and credited or improved capital and improved net worth by that process? I mean in a year or two before.

A Up until that year we had never liquidated any sizable number of securities resulting from an audit because we were never over or under any amount of securities. We might have been over 100 or 200 shares of stock, and after all the research was completed in two or three months we may have wound up with just one long and one short. Those are the kind of liquidations we had done back in the older days.

Q But this was the first time that you had ever liquidated millions of dollars worth of stock affecting capital --

A Of over stock?

Q Of over stock, yes, as that term we defined before.

A Right.

Q And improved capital by that means.

A True.

Q Mr. Speicher, I would just like to show you a portion of the minutes of a finance committee meeting of duPont, Stock Exchange Exhibit A, and just ask you to look at that (handing). Does that refresh your recollection that the firm put you in charge of these liquidations?

A No. You are talking about a different matter. This is dated December 2nd long before the meeting at the stock exchange.

Q Well, were you the person who had responsibility for the liquidations?

A This liquidation is something --

Q I am talking about the liquidations we are talking about, the ones following December 16th.

A I testified that there were three of us, Wally Latour, Sam Gay and myself appointed by the finance committee and the executive policy committee meeting. Yes.

Q Well --

A I was one of three.

MR. CAMHY: Your Honor, I have nothing further.

MR. HYDE: May I ask one question, your Honor?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. HYDE:

Q Mr. Speicher, to your knowledge were the three plaintiffs, Messrs. Hirsch, Kohns and Mundheim ever refused access to any information, any books or records of Francis I. duPont in connection with this merger?

MR. CAMHY: I will object to that, your Honor. It has no relation to the direct testimony and we would have

to go into a whole long thing about what they asked for. As far as the stock exchange or Haskins & Sells I can understand a question like that but as far as the plaintiffs are concerned it goes into a whole other aspect of the case and we would be here asking about what information was requested, etc. and what knowledge he had of what they looked into.

MR. HYDE: I think it is a perfectly appropriate question, your Honor, and I thought we were going to try to avoid recalling witnesses and while they were here we would bring out any relevant evidence.

THE COURT: Yes, but I think Mr. Speicher has already indicated that he was not really involved in the -- for a short time in the negotiations.

MR. HYDE: Well, he did that one meeting at least.

THE COURT: Well, he had one meeting and I gather there must be someone else who is more knowledgeable about it. So that's not going to save us time, it is going to waste time. Objection is sustained.

RECROSS EXAMINATION

BY MR. POLLACK:

Q Mr. Speicher, at any time after the liquidation of the securities was effected in December, 1969, did you

ever determine that any appreciable portion of those securities did not in fact belong to duPont?

A Not to my knowledge. Very early, I am sure in our research work after we went into liquidation we came across some evidence of having sold one or two or three or some number of them, yes.

MR. CAMHY: I object, your Honor, and move to strike.

THE COURT: Objection is overruled.

Q You say one or two or three.In other words--

A No, I meant--

Q Excuse me. You say one or two or three. In other words, you never became aware or were of the opinion that you had sold any substantial number of securities in this liquidation which did not belong to duPont, is that correct?

A In view of the large number I would say yes to that.

MR. POLLACK: Thank you.

REDIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Speicher, isn't it a fact that by reason of the very mature of these differences in liquidations that there is no real way of knowing whether you might have sold somebody else's stock in this kind of a

thing later on? Didn't we hear Mr. Lill testify to that yesterday that differences by their nature are so interrelated that you cannot tell on your subsequent audits how they go back to earlier audits?

MR. POLLACK: I object on the grounds that it misstates the testimony of Mr. Lill. Specifically I object to the form of the question.

MR. GILLESPIE: I object to the form as well.

THE COURT: Well, the objection is overruled in part and sustained in part. You can ask him the question without reference to Mr. Lill's testimony.

Q You testified -- did it ever come to your attention that you had sold some of these securities? Did you ever go diligently looking to find out whether you had sold some of the other securities?

MR. POLLACK: I object to the form of the question.

THE COURT: Objection overruled.

A I never have.

Q You never have?

A I never have.

Q In fact, on deposition didn't you, with me, didn't you make a guess and estimating it and say that it would have been one out of six?

MR. HYDE: I object, your Honor, to any guessing.

Q One dollar out of six?

A I think that was stricken. I made that guess--

MR. HYDE: Objection, your Honor--

THE COURT: Wait a minute. The objection is overruled. You may answer it.

Q You said one out of -- one million out of the six you made a guess then you withdrew it because it was a guess?

A No, somebody protested and I withdrew.

Q You said it was a guess and it was--

A It was a guess.

Q It was a guess.

MR. CAMHY: Your Honor, I have nothing further.

MR. GILLESPIE: If I may, Mr. Camhy has referred to a section of the deposition and only a portion thereof which I think misrepresents the total section. May I read the full two sentences in there involved?

THE COURT: Yes.

MR. CAMHY: I am going to move to strike it as evidence. If you want to explain what happened at the deposition I have no objection but I don't think it is any more competent now than it was then.

THE COURT: Well, you raised it, Mr. Camhy.

MR. CAMHY: I am just trying to show that anything

is a guess and it was a guess then it is a guess now and it is going to be a guess again.

THE COURT: All right, Mr. Gillespie.

MR. GILLESPIE: Page 51 of the transcript.

"Q As a result of your research have you found anything to lead you to believe that those shorts were generated" meaning the shorts in '70 and '71 "that those shorts were generated by improper or irresponsible liquidation of those six million worth of longs in December of 1969?"

THE COURT: Who was asking that question?

MR. GILLESPIE: Mr. Brooks on cross-examination of Mr. Speicher.

"A I would say there were some securities that it had been sold in that December of 1969 that came back to haunt us. Proportionately I would say the proportion would be small."

And then the portion that Mr. Camhy refers to was:

"Q About how much? Can you quantify it?

"A One to six, something like that. This is a guess."

And Mr. Camhy moves that portion be struck.

THE COURT: All right.

MR. CAMHY: May I read just a little more, your Honor, so we can have it complete?

THE COURT: Yes.

MR. CAMHY: "One to six something like that that's a guess you understand, I don't have an exact figure.

"Q I understand. Mr. Camhy, one dollar in six?

"Witness: Yes, I am not sure that that is right, I am just making a guess."

THE COURT: Mr. Speicher, I may be using the wrong terminology but I am interested in finding out what procedures were in effect in the firm. Am I correct that you had a count of the securities you had at the end of the day?

THE WITNESS: No.

THE COURT: How was that done?

THE WITNESS: It was done on audit date.

THE COURT: Only on audit?

THE WITNESS: No, that's one of them. That's a requirement. Every time a stock is ex-dividend generally the firm's security will be counted that day. So that if every stock paid a dividend once every four months -- approximately every three months, that particular stock would be counted.

THE COURT: That particular count.

THE WITNESS: Not everyone else. That's right. Just

that one. There may be hundreds of them that way but it was not a complete count. Now more recently the stock exchange and the SEC have put in new rules. But you are talking about back at the time that this suit concerns.

THE COURT: Yes.

THE WITNESS: The new rules are different.

THE COURT: So in other words, you didn't have a research team that was operating on a daily basis attempting to resolve differences that showed up in your calculations or inventory.

THE WITNESS: Yes, we did. We did have a team working on that. These would be finding, after they knew there was a difference, they would find and look for them and hopefully find these differences.

THE COURT: Is Mr. Gay in a position to tell me--

THE WITNESS: Yes, he would be in a position to testify much better because he organized a portion of this after he came with us.

THE COURT: All right, thank you very much. Anything else? Thank you very much, Mr. Speicher.

(Witness excused)

MR. CAMHY: Your Honor, may we--

THE COURT: My hours are 11:30 and 3:30. You will get your relief at that point.

MR. CAMHY: Mr. Chenet.

MR. POLLACK: If your Honor please, may I call Mr. Speicher back for simply one question to clarify the record? I believe there is an ambiguity.

THE COURT: All right.

M I L T O N A. S P E I C H E R, resumed.

BY MR. POLLACK:

Q Mr. Speicher, a few minutes ago you testified about your background starting with the fact that you were a runner some time around 1921 and you worked your way up through the ranks into the duPont firm ultimately and you used the term that in 1969 you became senior partner. Frankly I was thrown by that term because it did not accord with my recollection of your role. Can you explain to Judge Carter what you meant by that term?

A Yes. The previous year, that is 1968, in about October I was relieved of all my other duties, which included being comptroller of the firm and given the jobs that I indicated in my testimony. And at the same time another partner and myself were made -- called senior partner.

Q In effect was it a form of --

A It was a title--

Q -- retirement?

A It was a title. It was getting ready for retirement.

Q By senior partner you didn't mean that you were one of the controlling voices in the firm, were you?

A I assure you I was not one of the controlling voices in the firm.

MR. POLLACK: Thank you.

THE COURT: Thank you.

(Witness excused)

P A U L J. C H E N E T, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. CAMHY:

MR. CAMHY: Your Honor, I wish to offer into evidence a group of documents which I have already shown to Mr. Brooks and which he says he will not object to on the grounds of authenticity.

MR. HYDE: These are offered against the stock exchange?

MR. CAMHY: Yes. Exhibit 154, which is a work sheet of the exchange relating to the September 28, 1968, audit figures, and it is a work sheet adjusting capital computation. Exhibit 138 which is a letter to Samuel Gay from Robert M. Bishop dated November 12, 1969. Exhibit 144

which is a memorandum dated December 3, 1969. Exhibit 60 which is a letter from Franics duPont to the stock exchange dated December 26, 1969, it is a capital computation letter. Exhibit 27 which is answers to special financial questionnaire as of January 30, 1970, filed by Francis I. duPont with the exchange. Exhibit 222 which appears to be minutes of a meeting of the Board of Governors of the exchange dated January 22, 1970, at which a duPont matter was considered. Exhibit 223 which is minutes of the Board of Governors of the exchange held February 5, 1970. Exhibit 50 which is a special operations questionnaire received from duPont by the exchange and covering two periods, the period ending 3/31/70 and 4/30/70. And Exhibit 52 which is a special operations questionnaire by the exchange from duPont covering the period 5/31:70 and 4/30/70.

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MR. BROOKS: I don't think the characterization of the exhibits is correct as to the dates they cover.

MR. CAMHY: Report date, that's all I was referring to. Let the record indicate the only significance of the date is that they are in the upper right-hand corner.

MR. BROOKS: And they will speak for themselves.

MR. CAMHY: Yes.

Exhibit 215, which is a memorandum from Paul Chenet to John P. Videtti dated June 8, 1970, attached to which is an extra page of the memorandum, with an ink stamp on it.

BY MR. CAMHY:

Q I ask the witness if he can tell me whosewriting that is. If you will look at the whole memo and then at the last page see if you can tell us what the writing says and who wrote it?

A The notation is in my handwriting. Shall I read it?

Q Please.

A It is dated June 9, 1970. "Told John no further follow up at this time in view of merger and impending audit."

Q I assume John is John P. Videttii the person who wrote the memorandum?

A Yes, sir.

MR. BROOKS: I have no objection, your Honor.

I would like to note Exhibit 52 is the same as Stock Exchange Exhibit C.

THE COURT: Are you offering those exhibits?

MR. CAMHY: Yes, sir.

THE COURT: Let the clerk mark them.

(Plaintiffs' Exhibits 27, 50, 52, 60, 138, 144, 154, 215, 222, 223, 224 received in evidence.)

xx

MR. CAMHY: I would like to deal with a matter now that we had at the end of the day yesterday.

At the end of the day yesterday, your Honor, Mr. Chenet was asked two questions taken from a memorandum written by Mr. Dominach -- not two questions, one question-- and that is did he agree with what was said in that memorandum, and it said because of capital problems and operations exposure problems that it ought to be delayed. Then in answer to my question he said as to the second position he agreed. That was operations exposure.

It is my recollection that in his deposition testimony he did not qualify it that way but simply say that he agreed, and I would like to put that testimony into the record.

MR. BROOKS: I would like to object to Mr. Camhy's characterization, because we went through a couple of pages of go around yesterday and we ended up with the

question to Mr. Chenet not in reference to the memorandum, because he had never seen it, but it was simply a question.

THE COURT: I don't have the transcript in front of me, but my recollection is that he was asked-- Mr. Dominach had stated two positions, A and B, and he said he agreed with B and not with A: I gather that is the position Mr. Camhy has taken.

MR. BROOKS: I just wanted it to be clear Mr. Chenet testified yesterday he had not see the memorandum but had had oral discussions.

THE COURT: I understand that. But the positions that were taken in the memorandum, as I recall, were read to him and he indicated that he accepted the second but not the first proposition.

MR. BROOKS: That is the way the transcript reads, and I think that is correct.

Q Mr. Chenet, would you look at page 120 of your deposition.

A Yes.

Q I said"And to your knowledge" -- well, I asked you whether you agreed or disagreed with the view set forth in the first paragraph:

"Q I ask you that now.

"A I would have been in general agreement with that

recommendation, yes."

MR. BROOKS: Is this something being submitted as contradictory to what the witness said at the trial. I think it supports it.

THE COURT: That is my view.

MR. BROOKS: I move to strike reading from the deposition.

MR. CAMHY: It is different. I interpret it one way, perhaps Mr. Brooks interprets it another way. I submit it is different.

THE COURT: It is not. I don't think that is the kind of testimony that can properly be used to impeach the witness. At best it is ambiguous.

MR. CAMHY: He is an agent of the defendant, your Honor. His prior testimony would always be admissible. I agree it is not a contradiction. I simply want to show on examination he didn't seem to make this distinction.

MR. BROOKS: I disagree that his prior testimony is an admission against the exchange. For it to be admissible he would have to be an agent or officer, neither of which he is.

MR. CAMHY: You mean the testimony of an employee of the exchange is not binding?

MR. BROOKS: Not to my understanding.

THE COURT: Nor to mine. My understanding accords with Mr. Brooks.

Q You communicated your views to Mr. Stock?

A Yes.

Q And Mr. Stock was your superior?

A He was.

Q Did you communicate those views to anybody else?

A No, sir.

Q Were you present at the meeting with Haskins & Sells on December 16, 1969?

A I was.

MR. HYDE: You mean the meeting at the stock exchange?

A Yes, the meeting at the stock exchange with Haskins & Sells and duPont?

A I was.

Q Was the purpose of that meeting to review the capital computation as shown in the audited financial statement?

A That was one of the purposes.

Q Were the parties informed that there would be additional charges in that computation?

A Yes.

Q Would you look at Exhibits 143 and 154.

MR. CAMHY: Your Honor, may I show them to the witness to save time?

THE COURT: Yes.

MR. CAMHY: Your Honor, this will be quick, and it may not necessitate your hunting up the document.

THE COURT: All right.

Q These are the examiner's computation based on the exchange's examination of the Haskins & Sells audit, are they not?

A These are summaries.

Q Yes, summaries of those computations?

A Yes.

Q My question is, did the examiners make this information known to you in or about December 1969 and at or about the time of that conference?

A Yes.

Q In substance, isn't this what you communicated to the parties at the conference, these adjustments?

A Yes.

Q Can you identify on these certain handwriting where it says on Exhibit 154 the words "No

comment needed"? Can you tell me whose handwriting that is?

A It appears to be the handwriting of Mr. Robert Spies.

Q What is his position?

A His position then was an employee in the division of finance.

Q Could you tell us what the numbers are where somebody wrote "No comment" -- where Mr. Spies wrote "No comment needed"? Read off the initials, tell the Court what they mean and then read the numbers next to them.

A The first initials, AI, abbreviation for aggregate indebtedness. Shall I read the figures?

Q Yes, please.

MR. BROOKS: I am going to interject at this point, because I think Mr. Camhy has set the scene as this information having been available at the December 16 conference. If you look at the bottom of Exhibit 154, it's dated January 22, 1970. So, from my understanding of it couldn't it have been available at the December 16 conference. I think that should be cleared up before we continue, with the understanding that has been put into the record.

MR. CAMHY: No. I suggested the adjustments to capital were communicated at that meeting, not the final computations. These are the final computations. There is no problem. I don't suggest these final computations were known. There is another set we will get to which may have been known.

MR. BROOKS: I think you ought to establish that.

THE COURT: What is the testimony with regard to this document? Is the testimony that the calculations that appear on here were communicated?

MR. CAMHY: That the adjustments to capital were communicated. I have not established that the calculations were, that the resulting calculations were communicated, although the underlying facts, the major ones, were communicated. That is, the dividends shorts and the other charges reflected in the Lill letter.

Whether they worked through all the computations or not I can't tell, your Honor. I haven't adduced that from the witness.

Q Now, turning to the one that said no comment needed. Read the AI, the net capital, etc. Tell the Court what they are, and what the numbers are.

A The first number, aggregate indebtedness,

$355,763,919.

The second initials, NC, stand for net capital. $467,328.

The third initial R stands for ratio. That is 76,128 per cent.

Is there one more?

A The fourth initial C represents commitments. Next to that is the word "various" and the total amount is $189,140,000.

Next to that figure there is a note "See the white sheet of December 29, 1969."

Q Now, Mr. Chenet, this was a supplemental adjustment to an earlier computation, is that correct?

A It was.

Q And this supplemental adjustment tended to improve the capital ratio somewhat, did it not?

A It did.

Q As I recall, the principal improvement arose from the reclassification by Haskins & Sells of one major item of one million eight from one category of difference to another category of difference?

A That's correct.

Q Going back to the earlier one, and that is

the Exhibit 143, can you tell us what the aggregate indebtedness, net capital ratio as shown there is to the extent it's shown?

MR. BROOKS: I am going to object to proceeding with this witness withrespect to these documents. The witness has said he didn't have the two exhibits at the time that he had the information.

The next witness that Mr. Camp plans to call is the author of these documents, and I submit the proper interpreter of the figures and the proper reader of the handwriting, which sometimes isnot too clar to anotner.

Q Mr. Chenet, in your capacity as coordinator, are you capable of telling us what the aggregate indebtedness, capital, deficiency or deficit, as shown on the top of this document is?

A Yes.

Q Would you do so, please?

THE COURT: The problem, quite frankly, that I have with this, I really don't want to have to go over this again. If the author of these documents is going to be produced and is going to testify to the same thing I am certainly not going to want it in the record twice.

MR. CAMHY: I am only going to ask the author one question as to his own handwriting, and that's it. I want to get the ratio in, and I will have one or two questions for the author.

Q Can you tell us what the ratios are?

A The aggregate indebtedness on this exhibit amounts to $355,763,919. The net capital is a deficit of $1,342,517. The ratio is blank. There can be no ratio with deficit capital. The commitment total, $189,140,000.

Q Was the principal cause in the adjustments from the Haskins & Sells computatsion the charges for the two major dividend items?

A That is my --

MR. BROOKS: Objection for the same reasons I made the last objection.

Q If you recall.

MR. BROOKS: The person who made the calculations will be on the stand next.

MR. CAMHY: This coordinator knows it andhe can testify to it.

MR. BROOKS: Secondhand.

MR. CAMHY: He was the one who was at the meeting with Haskins & Sells, and the one who made the

calculations wasn't.

THE COURT: All right. You can answer.

A To the best of my recollection.

Q Did you inform Haskins & Sells of those figures at the meeting?

A They were informed at the meeting.

THE COURT: Let's take a ten-minute break.

(Recess)

T4a

THE COURT: Proceed, Mr. Camhy.

MR. CAMHY: Your Honor, we may have had a little foul up in the exhibits and that might require my approaching the witness and showing him things --

THE COURT: All right.

BY MR. CAMHY:

Q Mr. Chenet, I show you Exhibit 144, this is my copy and the handwriting all over it is mine, this blue writing. It purports to be a memorandum of a meeting dated December 3, 1969 -- excuse me, December 1st, it is dated December 3rd (handing). Would you look at the memorandum and tell me if it sofar as you recall is an accurate reflection of what took place at the meeting?

THE COURT: What is this Exhibit 144?

MR. CAMHY: 144, your Honor. I trust your Honor has it. I hope we didn't goof it up that badly.

A It is.

MR. CAMHY: I respectfully call the court's attention to a statement at the meeting in the presence of Mr. Bishop, Mr. Stock, Mr. Chenet and others of the exchange by Mr. Latour. Mr. Latour was from the duPont firm, was he not?

THE WITNESS: He was.

MR. CAMHY: And Mr. Latour further stated that the

firm at the present time has no present access to any additional capital.

Q Now, that meeting was about raising more capital, wasn't it (handing)?

A Yes, among other things.

Q Now, following that I assume there was this meeting of December 16th, and I want to show you a memorandum which is Exhibit 145, and it is dated January 26th and it speaks of a conversation on Monday morning December 29, 1969 (handing). Would you look at it please?

A All of the handwriting, all over it, in blue at least, is mine. I'm sorry, this had to be used.

MR. BROOKS: That's not on the copy that's going into evidence, is it?

MR. CAMHY: No, the copy in evidence doesn't have my blue marks on it. I am asking the witness to look at mine.

MR. BROOKS: Good.

Q Here, Mr. Chenet, you can look at this one, it doesn't have the marks on it (handing).

THE COURT: Do I have Exhibit 145?

MR. CAMHY: Well, if you don't, your Honor, why don't I hand you this one and we won't lose any time (handing).

Q Now looking at the first paragraph, Mr. Chenet, the ratio 1950 is really just a shade under capital compliance, isn't it? Within the range of capital compliance, isn't it?

A Yes.

Q Now does that in substance reflect what Mr. Gay told you on that morning?

A It does.

Q Did you hear Mr. Speicher testify this morning?

A Yes.

Q As to how these securities were liquidated?

A I did.

Q Does that accord with the impression you received, or your understanding when Mr. Gay told you what is reflected in that first paragraph of the memorandum?

MR. BROOKS: Your Honor, I think the proper way to elicit what Mr. Gay told Mr. Chenet is simply to ask what Mr. Gay told Mr. Chenet rather than does that accord with your impression.

MR. CAMHY: Your Honor, it is not what the witness was told, it is his mental impression which I am trying to establish.

MR. POLLACK: I object to the form of the question, your Honor, insofar as it attempts to relate

testimony of one witness to an impression of another witness.

THE COURT: The objection is sustained. On both counts.

Q Mr. Chenet, when you were told that long differences were sold, was it your understanding that they would look through their records and that if they could not on the basis of what they deemed inadequate search find a claim against the stock that they would settle and use it to raise capital?

MR. POLLACK: Objection to the form of the question.

MR. BROOKS: I object to the question. The time sequence is off.

MR. POLLACK: The question is not comprehensive in its present form, it is misleading, your Honor.

THE COURT: I accept that objection, Mr. Pollack. I don't understand it anyway.

Q When you were told that the principal reason for capital improvement, however, is the sale of long securities in difference accounts were you told on what basis the determination was made to sell those securities?

A I don't recall if I was told that at this specific time.

Q Were you told that at any time between the 16th and the 8th of January?

A It was a matter of discussion during that period of time.

Q What was your understanding of the basis upon which they were to sell the security?

A They were to be sold only after sufficient research had been conducted to establish the fact that there were no customer or other broker claims against the securities, and that they appeared to be proprietary securities.

Q Now, was it your understanding that if their search of the records yielded no claims against the securities and they had the securities in their possession they could sell them?

MR. BROOKS: Your Honor, I object to asking him whether that was his understanding. I think he ought to ask what his understanding was. If he is just asked that question --

THE COURT: Well, of course I gather that he's taken that liberty, Mr. Brooks on the theory that this is an adverse witness.

MR. BROOKS: I haven't seen any adversity from this witness at all, your Honor.

MR. CAMHY: It is only the defendant's employee, your Honor.

THE COURT: The objection is overruled.

MR. CAMHY: May I have the question reread please?

(Record read)

THE COURT: I guess my hesitation on that is that I have some difficulty in understanding what other grounds they could sell the securities. That's why I have a problem with that.

Q Well, as distinguished, Mr. Chenet, from having looked through the records and found the error and established that the error was one which made the security theirs.

MR. BROOKS: I object to the question.

MR. POLLACK: I object to the question, your Honor.

THE COURT: I don't understand now where we are. Let's start all over again.

MR. CAMHY: All right. Your Honor--

THE COURT: No, let's start all over again with the question and I will listen and attempt to understand it.

Q Mr. Chenet, did you understand that they could sell the security without having resolved the difference

by identifying the source of the error and the date and the transaction to which it related?

MR. POLLACK: I object, your Honor, the question is repetitious. The witness just gave a very concise statement of the basis on which he understood that they could sell the securities.

MR. BROOKS: I object, your Honor. All the prior testimony, your Honor, hasn't required resolving any errors. All that is required to sell a security is to identify it as a proprietary.

THE COURT: Well, if you ask him a question of what his understanding was, and directing him specifically to an area, he wants to know whether his understanding accords with that. The objection is overruled. I guess you will have to read it back. Do you still have the question in mind, Mr. Chenet?

THE WITNESS: Yes.

THE COURT: All right.

A My understanding was limited to the fact that the security would be eligible for resale, or sale after research. But I was not familiar with what the details of the research might be, or how far the firm intended to go.

MR. CAMHY: Your Honor, may I just again pinpoint it and then if I get the same answer I do, but I would like

to make sure the question is clear.

Q Mr. Chenet, it would be one thing for the research to identify the source of the error to a date, to an account or to a transaction and resolve it on the basis of an identifiable error based on date, transaction and account, and a determination that the security belongs to the firm that way. It would be another simply to search the records to find if therewas any other claim against the account or the stock and decide not having found such a claim you could sell the stock. Now was it it your understanding that you could do it in the latter case without having identified the error, or only in the former case where your research had taken you to a specific source of the error and a specific identity of the source of the error?

MR. BROOKS: I object to the question, your Honor. He said he didn't know what the detail was to be. He only knew it was to be done with research.

MR. CAMHY: Your Honor, I said I was going to repeat the question.

MR. BROOKS: That is not the question that you asked before.

MR. CAMHY: All right.

MR. POLLACK: I object to the form of the question.

your Honor.

MR. CAMHY: Your Honor, I tried to make the question clear.

THE COURT: Well, the question, at least to my mind, is now ambiguous. Are you asking him to get his impression of what they were going to do in that regard or are you asking him were they permitted to do that--

MR. CAMHY: What they were authorized to do as a result of the conversation.

THE COURT: That you may ask. Do you understand that now?

THE WITNESS: I think so, your Honor.

MR. BROOKS: Could we have the question stated the way it was agreed between your Honor and Mr. Camhy? I think --

MR. CAMHY: I am being harassed, your Honor. This is very difficult. I have an adverse witness and I have bright counsel up and down seeing to it that I don't get to the pinpoint of this problem.

THE COURT: Mr. Camhy, I think that all of you are very bright counsel, that's a part of thegame. I don't regard you as being harassed at this point in any event. All right, let's proceed. Restate -- reread the question.

MR. CAMHY: Would you read the last question please.

THE COURT: I suppose, as a matter of fact, Mr. Camhy, it might be better for us to find out from Mr. Chenet specifically in regard to the liquidation of long securities what did he authorize to do if anything.

MR. CAMHY: I thought he had said in a general way research and I was trying --

THE COURT: I know but then you may find out what he meant by that. But it seems to me that maybe we could get it that way.

BY MR. CAMHY:

Q In this discussion when duPoint was advised to research these longs did that research entail a search to find the fundamental event or transaction or date to which the error related?

A I don't recall that the instruction, or the request to liquidate was specific as to the type of research that should have been conducted.

THE COURT: Well now, I am a little confused. I think the question relates to what you and -- who was the other person from the stock exchange--

MR. CAMHY: Mr. Bishop.

THE WITNESS: Mr. Bishop.

THE COURT: -- what you and Mr. Bishop were instructing, specifically instructing them to do, what were you

authorizing them to do, not what they eventually did, but did you authorize them to proceed along a certain line and to what extent.

THE WITNESS: Well, your Honor --

THE COURT: That's what I think Mr. Camhy is trying to find cut.

THE WITNESS: As I recall at this meeting the instruction would have come from Mr. Bishop, only he had the authority. And the instruction was to research the long security differences and to sell those that the firm felt that they couldn't sell -- that they could sell. That is those that they determined were not due to customers or other brokers and appeared to be proprietary, or firm securities.

THE COURT: All right.

MR. CAMHY: May I ask one more question?

THE COURT: Yes.

Q Did that implicitly or explicitly involve as a condition that this research lead to an identifiable source of the error, an identifiable source of how it occurred or the date it occurred and a specific finding that based on the facts of the particular error they belonged to the firm?

MR. BROOKS: I object to the form of the

question, your Honor.

MR. POLLACK: I join in the objection and also on the further ground that it asks the witness to interpret what was in the mind of Mr. Bishop who evidently gave the instruction.

MR. CAMHY: Insofar as he heard it.

THE COURT: The objection is overruled. You understand that what you are being asked is whether Mr. Bishop in any way indicated that that was a form that the research was going to take and the extent to which it had to go before they could sell it. Can you answer that?

THE WITNESS: I don't recall Mr. Bishop having been that specific in his definition of what research could consist of.

THE COURT: I think that's as far as you can go, Mr. Camhy.

MR. CAMHY: May I try one more your Honor, along the same line?

THE COURT: I think you have gone as far as you can go with this witness. It seems to me that he's given us as much as he could in terms of what his impressions are.

MR. CAMHY: I agree, your Honor. What I would be doing would be attempting to summarize but I feel it would be helpful.

MR. BROOKS: I object to summarizing.

THE COURT: Well, if you are -- since there is no jury here and the only reason to summarize is to make sure that the witness understood, I think I understand what he said.

MR. CAMHY: I am not quite sure that I do. That's my point. May I try?

THE COURT: All right.

MR. CAMHY: Thank you.

Q Mr. Chenet, as I understand it that the research was to look through their records and determine that there was no other claim against these shares, and when satisfied that there was no other claim against these shares that they could therefore be deemed proprietary for the purposes of sale.

MR. BROOKS: I object. It is an improper characterization of the testimony and the question has been asked and answered.

THE COURT: I think that's right. I think if you are unclear let the reporter read back the answer. I think it is clear enough. Would you read back to the last question.

(Record read)

MR. CAMHY: Your Honor, I think I am satisfied

with the record.

THE COURT: All right. I thought you were.

BY MR. CAMHY:

Q At that meeting were you told, at the meeting of the 16th, do you recall anybody from duPont stating that they had already research these and that they were satisfied that they were good positions? That they were proprietary?

A I don't recall.

Q Was there some discussion about whether credit should be given for the longs against the shorts?

A There was some general discussion as to whether some credit should be given to longs, yes.

Q And in that discussion did anybody bring up the point that they had looked through these records and that these shares, that they couldn't find any claims against these shares, and that these were really proprietary shares and they should be able to use them for capital purposes?

A Not that I recall.

Q It came, indeed was it Mr. Bishop who suggested that they go look at these shares and research them in the hope that there might be a source of correct capital?

A That was one of the means that Mr. Bishop suggested that the firm employ to better its capital.

Q And it was really his suggestion at this meeting, wasn't it?

A It was one of his suggestions. Yes.

Q But my point is that they were seeking to use the longs against the shorts on a bookkeeping basis and a computation basis, is that right?

A No, I am not aware of that.

Q Well, they wanted some credit for the longs against the dividend charges.

A I am not aware of that, either.

Q Maybe I am confused.

At the meeting, wasn't there a request by either Haskins & Sells or duPont that in considering these capital charges that you give them some credit for the longs that they had?

A Yes.

Q And wasn't it Mr. Bishop's suggestion that the computation could not count be done that way, but that with that many longs, conceivably, research could disclose the availability of some of those shares as capital on a liquidation basis?

A Yes.

Q And wasn't it left at that meeting that they would then go and do the research?

A Yes.

Q So, the impression I got from Mr. Lill's memorandum was that this was a -- somewhat of a new idea at the end of the meeting.

MR. HYDE: I object to the form of the question.

MR. BROOKS: I object, your Honor.

THE COURT: The objection is sustained.

Q This was something new injected into the meeting after it had reached a certain stage?

MR. BROOKS: I object, your Honor.

THE COURT: The objection is overruled.

A I don't recall at what point during the meeting the point first came up. It was discussed at the meeting.

Q A time came when you sent the duPont firm this charging memorandum about capital,which is Exhibit 123 (handing).

MR. CAMHY: If your Honor can't find one, I -- I am sorry about this. It just got a little out of hand this morning.

Your Honor, here's one (handing).

THE COURT: All right.

Q In response to that memorandum, you received duPont's letter of April 15, 1970; is that right?

A Yes.

Q And that is Exhibit 251, which I show you now (handing).

You did receive this letter, did you not, from duPont?

A We did.

Q I direct your attention to Page 7 where it is stated that, with your approval, and even at your suggestion,

a program of liquidation should be undertaken to reduce the firm's overages.

Did their characterization of liquidation of overages concur with your recollection of the program that was authorized at that meeting?

MR. BROOKS: I object to the form of the question. It inquires into the writer's mind and that's Mr. Latour.

MR. CAMHY: No, it inquires into the reader's mind, and what the reader knew on April 16th.

THE COURT: All right. The objection is overruled.

A I would presume that it did.

Q Now, when you read that about a program of liquidation of overages, did that concur with your view about a research program, or did it mean to you that simply there was a liquidation of overages?

A My interpretation would be that the liquidation took place only after research.

Q So, your impression was that they had gone to the meeting, gone out, done their research, and then proceeded on that basis; is that correct?

A Correct.

Q When you received this letter of April 15th,

did you make it available to Mr. Bishop?

A The letter was addressed to Mr. Bishop.

Q Did you discuss it with Mr. Bishop?

A I believe that we did.

Q Was there a decision made as to whether to proceed with these charges or not to proceed with these charges, the charges set forth in the memorandum of February 2, 1970?

Just for the record, you recall that the February 2nd memorandum made the allegation of whether there was a continuing capital violation, and there were a set of draft charges.

MR. BROOKS: Your Honor, I don't think there has been a foundation for this question yet. He has not asked Mr. Chenet whether he discussed that issue with Mr. Bishop.

Q Well, did you discuss with Mr. Bishop whether the Exchange ought to proceed with the capital violation charges that are set forth in the February 2, 1970 memorandum?

A I discussed with Mr. Bishop the firm's reply to that staff memorandum, and we agreed that we would amend our memorandum, and, as I recall, an amended charge was drawn up.

For one thing, we eliminated the word "continuous) in the first charge, which was a word that

duPont objected to most strongly.

Q Then you had occasion to read duPont's letter and consider the letter in deciding what to do?

A Yes, sir.

Q Would you look at Page 8 of the letter? And I direct your attention to the third paragraph, and it says:

"Any technical violation as of September 28, 1969 was not brought to our attention until December when we were informed of the proposed additional charges against our capital."

Then it says:

"Immediately we liquidated enough of our overages so that any possible violation was corrected, even after charging our capital with the additional $8 million."

Did you read that when you received the letter (handing)?

A Yes.

Q Well, when you read their saying that immediately they reduced their overages after being told about this, did that in any way change your view about whether this had been a program of studied research done on the direction of Mr. Bishop?

A No. "Immediately" wasn't defined.

Q Would you look at Exhibit 215, please (handing)?

MR. CAMHY: Does your Honor need a copy of Exhibit 215?

THE COURT: I have one.

MR. CAMHY: Thank you.

Q Do you recall this memorandum, Mr. Chenet?

I direct your attention to the last sentence which talks about the firm's response to certain comments which the Exchange made about their reports and their content and the reasons which they received from duPont.

Do you see where it says, "Since the firm's response lacks specifics, do you wish me to pursue the matter?"

This is June; is that right?

A Yes.

Q And I gather your notation on the next page is "Told John no further follow-up at this time in view of merger and impending audit"; is that right?

A That's correct.

Q Now, these comments had to do with the same kinds of problems we had been having all along, isn't that right? The audit and the record-keeping?

MR. BROOKS: I object to that. I don't know what Mr. Camhy means by "the same kinds of problems" --

MR. CAMHY: Such as, you know, establishing controls.

MR. BROOKS: "All along" since when?

MR. CAMHY: At least since the last audit.

MR. BROOKS: I don't think that's correct.

MR. CAMHY: And maybe from the audit before that.

A Is there a question pending?

Q Yes.

Your comment was "no further follow-up" to seeking answers to these questions, "in view of the pending merger"; is that right?

A That's right.

Q Now, at the same time or shortly thereafter, because this is dated in June, middle June, at the time of the Dominach memorandum, you say that in view of certain operational exposures you had recommended that the merger be delayed.

A I don't know if "recommended" is the right word.

Q Well, you agreed. You agreed --

A Yes, I felt that, from the duPont standpoint, it might be better to delay it.

Q Evidently, your views were not accorded -- were not followed.

A Apparently.

Q Were you given any reason why they weren't followed?

A No, sir.

Q Do you know the reason why they weren't followed?

A Well, I have heard some discussion that there were more impelling reasons for allowing the merger.

Q I see.

Would you look at Exhibit 153, please (handing)?

Now, that was a request from the Toronto Exchange for confirmation from the New York Exchange that, as at the audit date, duPont was in capital compliance; is that right?

A Yes.

Q On January -- what is that, March 16th? --

A March.

Q On March 16, 1970, you have written, "I spoke to Gentile today and advised that we could not certify that the firm was meeting our capital requirements as at 9/28/69. He said to take no further action, and that they would" --

A Ask.

Q -- "ask Toronto to await our analysis, short form" --

I gather that refers to a questionnaire -- "January 31, '70, which was filed 2/13/70."

Now, Mr. Chenet, this request, "and as at a confirmation," that is, as at September 28th, the firm was in capital compliance; is that correct?

A The firm was not in capital compliance.

Q No. The request was for your confirmation that they were.

A Yes, sir.

Q And you were unwilling to give that.

A Right.

Q Because your records showed that it was not.

A Yes.

Q Now, would you have been willing to certify that they were currently in compliance?

MR. BROOKS: I object, your Honor. It's a hypothetical question. The event never arose.

THE COURT: No, the objection is overruled.

You may answer.

Q Well, let me put it to you this way:

Did they want a certification on a current basis?

A Not that I was aware of.

Q If they had asked for one, would you have been willing to give one?

A Yes, we would have.

Q At that time?

A Yes, sir.

Q But you would be unwilling to give one on the audit date?

A Correct.

Q Now, if you had given a current one, it would have been based on an unaudited state of condition; is that right?

MR. BROOKS: I object, your Honor. It's a hypothetical question.

Q I mean it would have knowingly disclosedly been based on a state of condition which was not an audited condition, that is, a state of condition in January.

MR. BROOKS: Your Honor, I --

THE COURT: Come, Mr. Camhy, let's move on.

You have asked him the question and he said he would have done it. Now let's --

MR. CAMHY: I am trying to get to an issue of materiality, your Honor, which is the materiality of the difference --

THE COURT: Well, you asked him a question and you got an answer that you don't particularly care for.

MR. CAMHY: No, I --

THE COURT: Now what you are attempting to do is to show the basis on which there was -- that he didn't have an audited statement.

MR. CAMHY: No, your Honor, I --

THE COURT: No, please.

MR. CAMHY: Yes, sir.

THE COURT: Let's move on. You know this is -- a great deal of time, I think, is being wasted on some of these items.

MR. CAMHY: Your Honor, we had some testimony by Mr. Lill about subsequent events and moving and changing times, and I am -- what I am trying to do is establish the importance of an audited state of compliance as distinguished from a state of compliance on an unaudited date, and the importance of that to people who were seeking confirmation, and the unwillingness of the Exchange to furnish it on an audited --

THE COURT: Well, ask him that. Ask him that if you think that is important. Ask him that specific question, if you believe it's important to your case.

Q Well, Mr. Chenet, do you attribute a greater importance to a capital computation based on an audited set of financials as distinguished from current figures which may not be audited -- which are not audited?

THE COURT: I would think that the answer to that is almost self-evident. I really don't understand what the purpose of any question like that is.

It answers itself, Mr. Camhy.

Q Mr. Chenet, will you look at Exhibit 198 (handing)?

This is a letter received from the duPont firm. It's a capital computation, and what I am particularly calling your attention to is the last paragraph of the letter about "provision has been made for dividend items" reported in answers to Questions 4 and 13.

What I am asking you is whether this letter refreshes your recollection that the duPont firm was advised that thereafter, after the meeting of December 16th, or early December, that they should include as adjustments to capital the two dividend items that were brought up at that meeting.

MR. BROOKS: Your Honor, 198 is a letter dated November 3rd --

MR. CAMHY: No. Then I have got the wrong one. It's 148. It's hard to read.

Is this 148?

Excuse me, Mr. Brooks.

MR. BROOKS: You have 148?

MR. CAMHY: I think it's 148. It looked like 198.

MR. BROOKS: Would you give me a minute to look at it?

MR. CAMHY: Yes.

MR. BROOKS: I have no objection to your proceeding.

Q The question is whether that last paragraph refreshes your recollection that the duPont firm was told that thereafter, in computing capital, they make appropriate adjustments for the two dividend items which were taken as capital charges in the Exchange's computation.

MR. BROOKS: I object to the question. You haven't asked whether he can answer that without having his recollection refreshed. I think that's the way to proceed.

THE COURT: All right.

Q Can you answer the question? Were they told that they should include these items in all future computations?

A Yes, they were.

Q And I, therefore, do not suppose that you need this letter to refresh your recollection?

A No, sir.

Q Thank you.

MR. CAMHY: Your Honor, that concludes what I have with Mr. Chenet at this time.

THE COURT: Mr. Hyde.

MR. BROOKS: Mr. Hyde yields to me, your Honor, subject to your approval. I think he has one or two questions which perhaps I will ask, and he might not have to do it.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. BROOKS:

Q Mr. Chenet, do you recall your testimony yesterday about your agreement with Mr. Dominach's conclusion that the merger should be delayed, and do you also recall the passage of your deposition that Mr. Camhy showed you this morning about that same subject?

A I do.

Q Do you believe those two statements by you to be consistent?

A Yes, I do.

Q Was it your opinion that the conclusion of Mr. Dominach that the merger should be delayed -- was that your opinion at the time?

A It was.

Q And was it based on the exposure that you believed the duPont firm had in respect to its operations problems?

A Basically, yes.

Q Anything else?

A No, that would be my basic objection to it.

Q What did you mean by "exposure"?

A Well, any firm that has bookkeeping problems or differences, and particularly short differences, always has financial exposure which may arise from adverse markets.

Q You meant exposure in terms of the dollar risk; money?

A Yes, sir.

Q When you formed the conclusion that you agreed with Mr. Dominach's conclusion that the merger should be delayed, did you know what assurances, if any, had been given to the Exchange on the availability of additional capital for a merged firm?

A I did not.

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Q Did you have any knowledge about the business fit that might or might not evolve from a merger of the Hirsch firm, the Glore Forgan firm, and the Francis I. duPont firm.

THE COURT: Business fit?

MR. BROOKS: Yes. Would you like me to define that, your Honor?

THE COURT: Yes.

Q By that I mean whether the areas of business of the three firms, both geographical and nature, such as underwriting, retail, would complement each other as opposed to overlapping each other. Did you have any knowledge about those considerations?

A I was not involved in those considerations.

Q Did you have any knowledge about what expenses would be eliminated if those three firms merged into one firm?

A I did not.

Q Did you have any information about projected profitability of a merged firm versus the three composite firms which were up for consideration of the merger?

A I did not.

Q Did you have any knowledge about the condition of the Hirsch firm at all?

A No, sir.

Q When the three firms did consolidated, on or about July 2nd, did the consolidation of the operations and the accounts of those three firms go smoothly?

A The reports that I received indicated that the consolidation was a smooth one.

MR. CAMHY: I move to strike it. Apparently, the witness has no direct knowledge.

MR. BROOKS: Your Honor, he has the same knowledge he has been using to answer all Mr. Camhy's questions from the reports that passed over his desk as the coordinator for the firm.

THE COURT: Is that what you are talking about?

THE WITNESS: Yes, sir.

THE COURT: All right. Overruled.

Q Had there been any advice to the duPont firm prior to the December 16th meeting we have been talking about that there would be additional charges argued for by the exchange at that meeting?

MR. CAMHY: Mr. Brooks, advice from the exchange?

MR. BROOKS: Advice that he knows of.

MR. CAMHY: I object to the form of the question. I don't understand it.

THE COURT: You can answer that.

A I believe that the firm was told that one of the purposes for calling the meeting would be a discussion of additional charges.

Q How long did the meeting last?

A As I recall, practically all afternoon.

Q Were the various topics discussed, such as those set forth in Mr. Lill's memorandum of that meeting, topics which were subject to dispute in the securities industry at that time?

A They were subject to different interpretations, I would say.

Q Were there different interpretations argued for within the ranks of the exchange as to some of those items?

MR. CAMHY I will object to that.

THE COURT: I think, Mr. Brooks, you ought to be specific. So the testimony will be clear what you are talking about.

Q Up to this time, Mr. Chenet, had you ever heard of different interpretations being argued within the exchange -- by that I mean various employees and officers of the exchange-- as to the proper capital treatment of short stock record differences?

A There was considerable discussion on that point,

mdh4 Chenet-cross

yes.

MR. CAMHY: Your Honor, if I may, I am not objecting, but I want to be sure that when Mr. Brooks says short stock record differences he and I are talking about the same thing, which are the items shown under question 13 of that questionnaire.

MR. BROOKS: I will agree to that.

MR. CAMHY: Thank you.

Q Did you understand that, Mr. Chenet?

A I did.

Q How about dividend differences?

MR. CAMHY: Here, your Honor, again are we talking about what's under question 13 of the questionnaire right under security count differences, where it says dividend differences?

Q Is that how you understand the term? Is that the eight million dollar figure?

MR. CAMHY: No, 1.8 million, the one they re-classified.

A That was a rather unusual item. I don't recall any --

MR. CAMHY: That is called dividend differences on the questionnaire.

A I don't recall any great discussion of any

discussions on that point prior to the receipt of these answers.

Q Did you say it was an unusual item?

A As I recall it was unusual.

Q Had it been seen before in respect to any other firm as far as you know?

A It probably had. I don't think it was common.

Q How about the eight million dollar item that Mr. Camhy referred to? Had that type of item been subject to different interpretations within the exchange's staff?

A Not different interpretation that I recall. It had been the subject of discussion.

Q Let me show you Exhibit 26, Mr. Chenet, which is the long form questionnaire as of September 28, 1969.

I call your attention to item 13, which Mr. Camhy has just referred to, to the entry "Valuation of security count differences and dividend differences."

Do you see that, sir?

A Yes.

Q As I understand your testimony, at this December 16th meeting it was agreed that the one million eight in short items reflected in the answer to that question would be reclassified. Is that your recollection?

A It is.

Q What was the basis for that determination that it would be reclassified?

A It was based on Mr. Lill's representation that there was no real difference between the two differences.

Q What did the exchange understand was the nature of that item before the meeting?

A The nature of the item was not clear to the exchange.

Q Did the exchange interpret it as a dividend item before it determined that it should be charged?

A I believe that it did.

Q On the answer it appears, following a heading "valuation of." And then two entries, securities differences and dividend differences, does it not?

A Yes.

Q Was the information that Mr. Lill supplied at that meeting that this indeed was a difference, albeit a dividend difference, and not a dividend, and, therefore, was no different than any other differences?

A Yes.

Q And what was the exchange's treatment of differences at this time in respect to it being acharge or not a charge for Rule 325 purposes?

A Short differences?

Q Yes.

A Short differences were not considered to be a charge at this time for Rule 325 purposes.

Q Am I correct that with the added learning that the exchange obtained at this meeting it was determined that this entry, as indeed it is headed, was a difference and not a dividend, and, therefore, fell within the exchange's practice of notcharging differences?

A Yes. Subject to receipt of a letter of amendment from Haskins & Sells.

Q At the end of this December 16th meeting, Mr. Chenet, whose job was it, in your understanding, to research those differences at the duPont firm?

A I didn't know.

Q Did you know that it was somebody employed at the duPoint firm as opposed to somebody at the change?

A Definitely.

Q The exchange does not research differences for anybody, do they, Mr. Chenet?

A No, sir.

Q Did you know the qualifications and experience of the people who you met with that day from the duPont firm?

A In a general way, yes.

Q Tell me how you would characterize their qualifications and experience?

A Well, I knew that Mr. Speicher had been associated with duPont for a good number of years, in the function area. I had met him on several occasions when I made examination visits over the years, and I was aware that Mr. Gay, the operations partner, had extensive experience in Wall Street accounting.

Q Had you ever gotten any reason to believe that those gentlemen, or any other members of the management of the duPont firm, were not responsible or capable securities industry professionals?

A I had no reason to doubt that.

Q Had you any reason to doubt that they didn't know how to research a long securities difference?

A No.

Q Let me call your attention to Exhibit 215, which Mr. Camhy showed you a minute ago, particularly to your handwritten passage on page 2 there, where, as I recall, you said that you weren't going to insist on any more specificity at this time because of the impending merger and audit.

What audit were you referring to?

A I believe that I had heard or was under the

impression that there was going to be an audit either immediately preceding or immediately following this merger.

Q By Haskins & Sells?

A Yes.

Q Would the results of an audit provide the specificity which Mr. Ring was questioning?

A Mr. Videtti.

Q Videtti, I'm sorry.

A Well, to some extent, but my immediate concern was not to burden the firm at this time with the additional research and correspondence that would be required to answer Mr. Videtti's further inquiries.

Q Would there have been any sense in getting more specificity on a condition which would be shortly changed as a result of a merger, and therefore be a new condition about which you had no specificity?

MR. CAMHY: I object. This becomes leading to a point --

MR. BROOKS: I withdraw the question. No more questions, your Honor.

THE COURT: Anything, Mr. Hyde?

MR. HYDE: I have no questions, your Honor.

THE COURT: Mr. Singer?

Q Mr. Chenet, the capital computations that you have been asked about this morning and yesterday, were those made from answers to questionnaires, the computations, were they based upon answers to questionnaires both submitted by F. I. duPont and by Haskins & Sells?

A The questions that relate to the September 1969 were related to audited questionnaires, yes, sir.

Q In other words, the computations that were made by the people working under you were based on the figures that Haskins & Sells supplied?

A Yes.

Q And the stock exchange, in making those computations, didn't change any of the figures that were

in the answers that they supplied, they interpreted them differently, is that right?

A That's correct.

Q And when it came to the matter of how to deal with long securities differences, that was a matter of judgment and interpretation, was it not?

MR. CAMHY: I object to that, how to deal with.

Q When it came to whether you would impose a charge for these long security differences, that was a matter of interpretation?

MR. CAMHY: It's contrary to the testimony. There has been no discussion of a charge for long security differences.

THE COURT: I think that's right.

Q Was there a charge for securities differences?

MR. CAMHY: As I understand the testimony there has been no charge.

MR. SINGER: I object to this interruption by Mr. Camhy.

THE COURT: I think what you ought to do, Mr. Camhy, is if you have an objection stand up and object. If you don't have an objection --

MR. CAMHY: Respectfully object. The

question assumes a state of facts which it seems to me is contrary to the record.

THE COURT: He is asking was there a charge. Overruled.

Q Was there a charge for any kind of securities differences?

A No, sir. Not for the type of differences we have been discussing.

Q Up until December of 1969, had duPont been charged for the kind of securities differences regarding which charges were proposed on December 16, 1969?

A They had not.

Q In the meeting on December 16, 1969, were the positions taken by the duPont people and by Mr. Lill untenable positions?

A I am not sure I understand that question.

Q The stock exchange disagreed, did it not, with the positions that Mr. Lill and the duPont people were taking as to whether there should be a charge for these securities differences?

MR. HYDE: I object. I am not sure there is testimony as to Mr. Lill having taken a position. There was an overall discussion of the problem, as I recall

his testimony.

THE COURT: I thought it was Mr. Chenet's testimony either as adduced from questions of Mr. Camhy or Mr. Brooks that Mr. Lill had taken a position at the meeting and had offered some suggestion. I may be wrong about that.

MR. HYDE: I think that was as to the one million eight item that Mr. Brooks went into on his examination. I did not interpret the present question to relate to that.

MR. SINGER: I didn't think there was any question about it, but I will ask the witness.

Q At the meeting, did the duPont people, and did Mr. Lill, take the position that there should be no charge for those securities differences because the longs could be related at least in substantial part to the shorts?

THE COURT: That's what I thought his testimony was.

Q Isn't that the position they took?

A I'd say yes, basically that was their position.

THE COURT: You are giving me pause, Mr. Chenet. I thought that you specifically said "Yes" in answer to either Mr. Brooks' question or Mr. Camhy's

on the same subject, that you said that was Mr. Lill's position that there was no diffreence, really, that they all amounted to the same thing and therefore, there should be no charge.

MR. HYDE: I think that again relates to the one million eight item entitled dividend differences under item 13, evaluation.

MR. BROOKS: That was the only item I inquired about.

MR. HYDE: I think Mr. Lill did testify in his opinion these could be combined properly as the exchange requested. If I may go on just to clarify this item, the $29 million of long securities dividends and the $6 million of short securities dividends are a different matter.

MR. CAMHY: That is not what I inquired about. I inquired --

THE COURT: All right, I am sorry I introduced the subject. Mr. Singer has gotten an answer from him, so let's proceed. If you want to bring anything out, you will have the opportunity.

MR. CAMHY: Thank you.

Q Did anybody at that meeting tell either Mr. Lill, Mr. Speicher, or any of the other duPont people

"Your position is absolutely ridiculous"?

MR. CAMHY: I object to that, your Honor.

Q In words or substance?

MR. CAMHY: Objection as to form, your Honor.

THE COURT: The objection is overruled.

A Not that I recall.

THE COURT: Not only that, I think the question was: Did anybody at the meeting regard their position as being unreasonable?

THE WITNESS: Well, we had to take the position that we didn't agree with them.

Q That's very clear, Mr. Chenet. But my question is, did you regard that they were taking these positions in bad faith?

A No. We felt they were asserting their contentions or positions.

Q And their contentions were arguable, weren't they?

A Yes.

THE COURT: Mr. Singer, can we adjourn for lunch now?

MR. SINGER: Yes, your Honor.

THE COURT: All right, we will adjourn until 2 o'clock.

(Luncheon recess)

AFTERNOON SESSION
2:00 p.m.

(In open court)

P A U L J. C H E N E T resumed.

CROSS EXAMINATION CONTINUED

BY MR. SINGER:

Q Mr. Chenet, in connection with your duties with the stock exchange you had reasonably frequent contact with the people at the duPont firm, did you not?

A I did.

Q And those working under you also had frequent contact?

A They did.

Q Did the duPont firm, to your knowledge, ever withhold any information from either you or your staff?

A Not to my knowledge, no.

Q Did the duPont firm ever to your knowledge deny you or your staff full access to their records?

A No, sir.

Q In the period from the fall of 1969 through July 1970, that is before what has been referred to as the merger, was it your opinion that the duPont firm was making good faith efforts to resolve the back office problems that it had?

A Based on reports we were receiving I will say yes.

MR. SINGER: I have no other questions, your Honor.

REDIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Chenet, I wanted to go over the December 16 meeting again only because I think I became a little confused on cross as tothe contentions. It's my understanding that the exchange advised duPont and Haskins & Sells that a charge would be imposed for an item called dividends on securities failed to be received, failed to receive and that that item amounted to approximately $8,100,000.

MR. BROOKS: Your Honor, I object to the question. I never heard the word "commission" in this case before.

MR. CAMHY: I didn't say commission. I said exchange. I corrected myself.

MR. BROOKS: I didn't hear the correction.

MR. CAMHY: I am sorry. I heard the mistake and I thought I heard myself correct it.

MR.BROOKS: I believe you said that the commission advised --

THE COURT: Well, in any event, the question is intended to refer to the exchange. All right.

A Yes, the exchange advised the firm that that item would be charged to net capital.

Q Wasn't it the contention of Haskins and duPont that in considering that charge as well as another charge on dividend differences some credit ought to be given for the long securities differences?

A That point was raised, yes, sir.

MR. HYDE: May I ask by whom?

THE WITNESS: I don't recall.

Q It was raised on behalf of duPont and Haskins & Sells, wasn't it?

A Yes.

Q Now, this did not involve at all the charge for the short securities differences, did it?

A No.

Q There was no suggestion at that meeting that short securities differences would be charged, was there?

A Suggestion by whom?

Q By the exchange that the $7 million short securities differences ought to be charged?

A I think there was some discussion that

consideration might be given to leveling some charge in that connection.

Q But ultimately they were not charged were they?

A They were not.

Q On cross Mr. Brooks asked yousome questions about elements of a merger called, one of them he called business fit, that is the fit of the two firms, do you recall that?

A Yes, sir.

Q And then he asked you about profitability?

A Yes.

Q And then he asked you about elimination of expenses.

A Yes, sir.

Q As factors in connection with whether a merger is good or bad for the two companies involved.

A Yes.

MR. BROOKS: I think that mischaracterizes the question, your Honor. He asked the witness if he knew anything about those factors.

THE COURT: Let me make two statements about it. In the first place, I don't see what relevance it has to this case. And Mr. Brooks raised it but I don't

see why we have to, you know, go into this again. I don't see what relevance this has at all to this case.

MR. CAMHY: I have only one more question, your Honor. It's kind of a function for another witness.

Q To your knowledge, was Mr. Arning at the exchange handling or thinking about those kinds of problems?

A To the best of my knowledge, he was, yes.

MR. CAMHY: That's all I have, your Honor. Oh, excuse me.

THE COURT: Does the exchange play any role in whether a merger should or should not -- does the exchange have any responsibility in that regard whether a merger should or should not be effectuated?

THE WITNESS: Well, I am sure that the proposed merger would have been discussed in some detail with the senior exchange staff.

THE COURT: Do they have to approve it?

THE WITNESS: They would have to be convinced that out of the combination, or out of the merger a viable entity would come.

THE COURT: All right, then under those circumstances I take that comment back and it can be

erased from the redord. Evidently it's incorrect. I didn't realize that. All right.

MR. CAMHY: Thank you, your Honor. That really doesn't relate to the witness, but I do want to offer an exhibit. It's Exhibit 195, and it's a letter dated October 21, 1970. Authenticity has been conceded. I understand that there is a relevancy objection and because of that I wish to point out relevancy in offering the exhibit. We have in the record the special operations questionnaire of May 31, 1970, which is duPont's statementto the exchange of what its condition is at that time in response to questions.

THE COURT: Well, what is the purpose -- if it has no relationship to this witness -- of introducing that element before we are through?

MR. CAMHY: I am sorry, your Honor, I didn't mean that.

THE COURT: I saw Mr. Hyde getting up, I thought maybe he wanted to ask a question.

MR. CAMHY: Excuse me, I am sorry, I thought we were done with the witness.

MR. HYDE: I only intended to inquire whether this was being offered as against Haskins & Selis.

MR. CAMHY: No.

MR. HYDE: That's all.

THE COURT: Are we through with Mr. Chenet?

MR. BROOKS: No, your Honor, as a result of your Honor's exchange I have one or two of Mr. Chenet.

RECROSS-EXAMINATION

BY MR. BROOKS:

Q Mr. Chenet, in July of 1970 did the New York Stock Exchange have any rule that you are aware of requiring the exchange's approval of a merger of one or more of its member firms into themselves?

A No rule that I am -- that I was aware of or am aware of.

Q Now, when you said the exchange would have to be convinced of the viability of the end product of the merger, can you be more specific in what you meant by viability? Thrre is no rule about viability as such, is there, sir?

A No, but I think the exchange would be concerned that out of this -- that this would be a beneficial merger from which an entity with reasonable prospects would emerge.

Q By that do you mean that the merged entity could comply with existing exchange rules?

A That would be one of the --

MR. CAMHY: I object, your Honor. At this point he is putting it right into the witness' mouth. This is the exchange's witness. I object to the form of the question, your Honor.

THE COURT: The objection is overruled.

A That would be one of the considerations, yes.

Q Is there any authority in the exchange to do anything other than enforce its rules that you know of?

A Not that I am aware of.

MR. BROOKS: No further questions.

THE COURT: Well, you may want to ask some more, Mr. Brooks. What I want to find out is inthe exchange with you and Mr. Brooks you indicated there was no rule as I understand your testimony, that they would have to approve. Suppose the exchange had come to the conclusion that the merger, the proposed merger would not produce a viable end result, what authority -- could it prevent the merger? Would it take steps to disallow it?

THE WITNESS: I am not sure I could answer that, your Honor. I think the decision would have been made at a much higher level than mine.

THE COURT: Well, what I want to find out, is it your impression that authority existed someplace in the Exchange to prohibit the merger if the conclusion was reached that it would not result in a viable entity?

THE WITNESS: I think that the Exchange could discourage the merger, even though they may not be able to point to a specific rule that would have prohibited it.

THE COURT: All right. Thank you.

Anything further?

MR. CAMHY: Yes, your Honor.

Stop me if you --

THE COURT: I don't want to prolong this by my attempt to understand what's involved.

MR. CAMHY: Stop me if you think this is repetitious, your Honor.

Q Mr. Brooks spoke about profitability, compatibleness of fit, and considerations like that.

Did you understand that those considerations were being -- were operating on senior officers of t[illegible] Exchange in their view of the merger?

MR. BROOKS: I object to the question, your Honor. It calls for his understanding of somebody else's mind.

MR. CAMHY: Your Honor, I submit, why did he ask him these questions?

THE COURT: I agree. I think that -- well, the objection is overruled.

A I was under the impression that these factors were being considered.

MR. CAMHY: Thank you.

THE COURT: All right. Thank you very much, Mr. Chenet. I think that's it.

(Witness excused)

THE COURT: Call your next witness, Mr. Camhy.

MR. CAMHY: Your Honor, may we get to this exhibit, please?

The letter is dated October 21, 1970, but it represents the Exchange's report of its analysis of a questionnaire dated May 31, 1970. The defendants have tendered to us the issue of the condition of duPont at or about the time of the merger. So evidence of that condition is the special operations questionnaire, and while this report was written thereafter it represents the Exchange's analysis of that questionnaire --

THE COURT: This is from the Exchange?

MR. CAMHY: Yes, sir. So if what we're trying to do is find out what it was like on or about just before

the merger, why you take the questionnaire and then this retroactive analysis by the Exchange of what the ratio was like and other things that they looked at. And that's why I offer it.

MR. BROOKS: Your Honor, I submit that it's not relevant because of the date. Whatever knowledge it imparts was not known until October 21, 1970. long after the question of issue in this case as to what should have been disclosed or was disclosed on or before July 2nd.

MR. CAMHY: Your Honor, may I respond to that?

THE COURT: You don't need to repond to it yet. I think that you may be right, but it seems to me that you can have this one of two ways:

It would be admitted subject to connection, that is, to establish that what appears here is actually in the knowledge that the Exchange had as at May 31st or before the merger; or I won't allow it until that is established.

MR. CAMHY: Your Honor, may I make a request?

THE COURT: Yes.

MR. CAMHY: Mr. Brooks has posed to me two problems. One, to show what existed, and, two, to show that the Exchange knew it.

Now, conceivably in the context of this case,

what existed may, depending on how certain arguments are handled and legal contentions are handled, what existed apart from the Exchange's knowledge of it might be of interest to the Court. And I will not, in the absence of further proof of knowledge, show that the Exchange knew it from this letter, but I would like this letter in as proof of an abstract state of facts as to the condition of the firm on that date.

That's my point.

MR. BROOKS: It's not tried on abstract dates --

MR. CAMHY: You posed me that issue, Mr. Brooks.

THE COURT: No, I think that you may not be able to prove that the Exchange had actual knowledge of this set of facts as of the 31st of May, but you may be able to prove that there was sufficient information around that they should have had knowledge of it, as evidenced by this letter.

MR. CAMHY: That's right,your Honor.

THE COURT: But I think that a weight of proof. And so, what I will do is I will admit it subject to your being able to establish that fact.

MR. CAMHY: All right.

Your Honor, may I ask that the date involved be the date of the merger, July 2, 1972, as I consider my

target date?

THE COURT: All right.

MR. CAMHY: Thank you.

I will call Mr. Samuel Gay.

S A M U E L A. G A Y, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

(Plaintiffs' Exhibit No. 195 was received in evidence.)

DIRECT EXAMINATION

BY MR. CAMHY:

Q What is your present occupation, Mr. Gay?

A Senior vice-president of the New York Stock Exchange.

Q When did you get that position?

A December 1, 1970.

Q What job did you have before that?

A My last employment was in July of 1970 with F. I. duPont.

Q How long had you been with duPont before you went with the Exchange, before you left duPont?

A Approximately thirteen months.

THE COURT: I think you indicated -- what did you say your position with duPont was --

THE WITNESS: I came to the Exchange on December 1, 1970, but I was unemployed from July of 1970.

THE COURT: You were with duPont?

THE WITNESS: I was with duPont through July '70.

THE COURT: Did you indicate what your position was? That's what I --

THE WITNESS: No, he didn't ask me.

Q What was your position with duPont?

A Associate managing partner.

Q Before you were with duPont, where did you work?

A In Paine, Webber.

Q And before you were with Paine, Webber?

A Walston & Company.

Q And before Walston?

A Glore Forgan.

Q And before Glore Forgan?

A Reynolds & Company.

Q Had you ever worked for Haskins & Sells?

A Yes, sir.

Q When was that?

A From 1946 to 1954.

Q Did you know Mr. Petrillo?

A Yes, I did.

Q When you came to duPont, did you find that there were substantial back office operational problems?

A After I arrived?

Q Yes.

A Yes.

Q And was part of your job dealing with those problems?

A In the overall concept of my job, yes.

Q In or about the middle of December 1969, did you attend a meeting at the Exchange at which Mr. Lill was present, Mr. Speicher was present, and Mr.Bishop and others from the Exchange were present?

A I attended a meeting at the Exchange the middle of December. I don't recollect if Mr. Lill was there, but the other people were.

Q Do you recall the discussion of the additional charges to capital?

A Yes, I do.

Q And do you recall that there was a suggestion that capital could be helped by the liquidation of securities in the long-difference accounts?

A Yes, I do.

Q Can you tell us what it was that you heard as far as the suggestion is concerned?

A There was a conversation about capital itself in its broad context.

During the conversation, Mr. Bishop brought up the fact that if we had long stock record differences, or security count differences, excuse me, and they are legitimate or bona fide long differences, then we should consider selling some of these differences out.

T2A 2

Q Can you tell me what you understood him to mean by legitimate long differences?

A I considered that Mr. Bishop indicated or meant by his indication that the firm would do research and would do that which is necessary to establish whether a long count difference is truly a long difference and therefore can be sold out.

Q Again, would you tell me what you mean by a long difference in this context?

A In its simple situation, it would be that you would have one customer that owned 100 shares of American Tel, and you had 200 shares in your possession.

Q So then you would have 100 shares extra, and no customer with a claim against it?

A No customer on our books.

Q On your books?

A That's right.

Q So that what was involved would be the search of the records for a claim against the shares that you seemed to have over?

A It would be a lot more involved than that.

Q Would you describe what was involved?

A Let me say that my illustration would be a very simple -- was a very simple illustration of 100, 200.

mdh2 Gay-direct

As a matter of fact, in a firm such as duPont there would have been many positions on the record for American Tel. There may have been 500 different positions for customers, bank loans, for transfers, for stock loans, for sales, stock borrowed, items in transit, and many type of situations and transactions that would have appeared on the books.

In researchingyou would have had to try to identify the count or the control count that was performed by Haskins & Sells accounted for all of these items. In addition to that you would have the additional problem that customers were writing letters into the firm regarding their confirmation of their customer statement. You would have to go into those letters to try to ascertain whether someone said "You owe me 100 shares of American Tel & Tel, it doesn't show on my statement."

We did have an extremely bad situation at that time, "We" being the industry as opposed to only duPont, that not only weren't the customers sending back their confirmations in great numbers but the confirmations to the banks and the confirmations to the brokers in the industry were very poor in their response. Therefore, you did not have a real full picture in a lot of the areas.

Q When you speak of confirmations, you mean those communications sent out by the auditors to the people with

whom the firm dealt seeking to confirm a status of an account on a particular date, is that correct?

A Yes.

Q So what I understand you to say is in addition to going through your own records you would go through customer communications such as complaints, and then you would go through the customer confirmations which the auditors sent out as to which you had gotten responses?

A Yes.

Q This fundamentally, though, was a search through your records and through the auditor's procedures of confirmation and through communications from stockholders and through other records available to you for a claim against a stock which you had in your possession, is that correct?

A To try to identify that someone was making a claim for a security that we didn't show him on the record as being owed the security to.

Q You then concluded that if it is a legitimate long difference, if after doing that kind of a search, you cannot come up with a claim which takes the stock, is that correct?

A If you performed all of those steps and identified every one of those items, yes, that is absolutely true.

Q And so then your position is that if I look through all of these things and I can't find somebody else claiming it, then it is a legitimate long difference?

A I would say that's so.

Q And that was the kind of a difference which you thought you could liquidate?

A That's what I felt that Mr. Bishop meant when he talked about liquidating long differences. We should say long security count differences.

Q At the time of this meeting, December 16th, had there been attempts to resolve these differences on a specific identification basis-- that is to say, to find that specific event or date or transaction which caused the error that gave you the stock?

A I don't know whether you are asking me whether what I explained would be the process or a new process.

Q No, whether some other process was in force or some other process was in operation seeking to find the specific event or transaction to which the stock apparently related.

A If we had found the specific event we wouldn't have had the difference.

Q A time came after December 16th when you prepared certain lists of securities which might be eligible for treatment in accordance with your understanding of the

meeting of December 16th, is that correct?

A We would have had lists from the time of the auditor's counts that were being worked on continuously from September or the early part of October.

Q Then actually these lists had already been in existence, prior to the 16th?

A There are lists that are continually being corrected that are in existence from the time that the auditors finish their first counts.

Q Can you tell me what happened right after the 16th?

A I don't understand what you mean right after the 16th.

Q You left the meeting, you went back to the office. Now, can you tell me what happened back at the office in respect of each security?

A Mr. Speicher and I met with the finance committee, and told them what transpired at the exchange.

Q Then what happened?

A There was a discussion regarding the long security differences and a program set up to see if we could identify those type of differences for the possibility of selling out long security counts.

Q What did you do after that?

A I personally?

Q Yes.

A In my job as associate managing partner, and part of which was the operations, I sent the internal audit department to presse their efforts at furthering the research they had been doing since the early part of October to come to some conclusions on those type of items.

Q Were such lists made available to you or generated by that department?

A Lists were generated by that department and turned over to the finance committee.

Q Did you participate in that turnover?

A No, I did not.

Q How did the lists get from that department-- are you in that department, the research department?

A No, the internal audit department reported to me, and we had a gentleman at the head of the internal audit department, and he was instructed that as he prepared these lists to turn them over to the finance committee.

Q Did you see the lists when they were turned over?

A No, I did not.

Q Did you, however, understand that they met the qualifications that you just expressed?

A I don't know which qualifications you are talking

about.

Q You described a process of determining how you know that you have what you called a legitimate long difference, and my question is, were you satisfied that these lists met those qualifications?

A I was satisfied that the people we had in the department who were people with experience in the industry were doing their job and were turning over lists with indications on the lists as to what they had performed and were finished with it at that point.

Q Did all the lists show they had done what they should have done to meet the qualifications that you expressed before?

A I don't know.

Q When the lists were turned over to the finance committee, do you know what action was taken?

A Eventually some securities were sold out.

Q Do you know how many dollars worth of securities were sold out?

A Approximately six million dollars.

Q Did you know which of those lists were acted upon at the time?

A No, I do not, or I did not.

Q You didn't know it even then, did you?

A I didn't know it from the list. The function that we had was to take the documents, the purchase documents which would have been written, and check them out against the records to make sure that the mechanical or the book-keeping transactions were recorded properly.

Q Then the sales came back a ticket at a time, didn't they, stock by stock, as if they had been selling any other stock?

A Each stock would have had its own ticket.

Q That's right, but you were never told this list or that list was acted upon. What happened was that in the usual course of the brokerage firm's business, when the brokerage firm sells securities you get the tickets back and you just make sure those stocks are marked as not being in inventory any more, isn't that right?

MR. BROOKS: I object to the form.

Q There was no separate identification of these securities as a group to let you know which had been sold?

A The internal audit department from the ticket itself would have been able to identify that it was against some of these lists, or some portions of some of these lists.

Q But were you ever told which as a group had been sold and which had not?

A Personally, no.

So the only function was a mechanical one of letting internal audit know that it must lighten its records by these securities because they had been disposed of, isn't that right?

MR. BROOKS: I object to the form of the question.

THE COURT: Overruled.

A And to verify the bookkeeping transaction itself.

Q Right.

Now, did you know the financial effect of the transactions that were about to be entered into? That is, what effect they had on capital ratio and what effect they had on net worth?

A I didn't know the actual transactions that were going to be entered into, but in any given set of circumstances I would have known what the effect would have been.

Q Did you know that the purpose of this liquidation was to aid capital?

A That was one of the purposes.

Q Yes. But the purpose was to help you get into compliance as a result of this conversation at the exchange, wasn't it?

A Well, we took up that matter because of the conversation at the exchange.

Q Yes.

Now, when these securities were sold, did you maintain a liquidation of differences account -- that is, did you preserve these differences in any particular place so that you knew what you had liquidated and you could always go and say "This is our liquidation of differences account in the firm"?

A No.

Q Did you maintain any reserve against the possibility that there would be claims on these securities?

A Not to my knowledge.

Q Mr. Gay, I am showing you two exhibits which are standard special operations questionnaires which duPoint filled out during this period. Your name appears to be on one of them as member in charge of operations. Yes, it is on both. That's right.

Q Mr. Gay, looking at that questionnaire, is there any place where you could tell that long differences had been taken and had been liquidated and had been used to buy up capital charges and infused into net worth?

A I don't understand the question, Mr. Camhy.

Q There is a showing of long differences, isn't

that right?

A Yes, there is.

Q And there is a showing of short differences?

A Yes, there is.

Q But is there any showing of long differences that have been liquidated?

A No.

Q And is there any showing that the liquidation went into the general revenues of the company?

A Not on these questionnaires.

Q Are you familiar with the long form questionnaires?

A Yes, I am.

Q Would any such showing be made in the long form questionnaire?

A The long form questionnaire would have been filed prior to --

Q I am talking about the January 30th long form questionnaire. There was one that was unaudited.

A I don't believe there was a long form questionnaire in January.

Q I guess we are just in error. I don't know whether it would help if I showed it to you.

A The long form is the auditor's questionnaire. I didn't know there was one in January.

Q There was a similar type one but unaudited?

A Short form questionnaire.

Q But it looked like the long form in January. Maybe I ought to get it. It is Exhibit 27. (handing to witness)

Would you look at question 13, please. Do you see where it says valuation of securities count differences?

A Yes.

Q Valuation of securities count differences, long, 11,621,000, and short$9,902,748?

A Yes.

Q Now, Mr. Gay, do you recall that on the audited questionnaire as at the previous September the differences long was substantially larger, approximately 29,000,000, isn't that right?

A I recall that.

Q Is there any way you can tell on this questionnaire that six million at least of those differences were sold and went into the general funds of the company to be used to buy up charges against capital and to be added to net worth?

A No, you cannot.

Q Thank you. Mr. Gay, when was the first time you gave notice that you were leaving duPont?

A Either the latter part of 1969 or the early part of 1970.

Q So it was in December of 1969 you informed them that you intended to leave, isn't that right?

A Approximately at that time.

Q At or about that time didn't Mr. duPont give you certain assurances in order to make you stay?

A Yes, he did.

Q Weren't those assurances that if you stayed until the end of the year, or at least after June 30th, I think, he would see to it that you didn't take any loss on your investment?

A Yes, he did.

Q Under that guarantee you could have stayed right through until December 31, 1970, and had the legal benefit of the guarantee, isn't that right?

A Yes, I could have.

Q In June of 1970, however, you advised him you were leaving, isn't that right?

A Yes, I did.

Q You didn't have a job to go to then, did you?

A No, I did not.

Q But you left anyway?

A Yes, I did.

MR. CAMIY: Your Honor, I have nothing further.

THE COURT: Mr. Brooks, are you going first now?

MR. BROOKS: I have a few questions.

CROSS-EXAMINATION

BY MR. BROOKS:

Q Mr. Gay, I will represent to you that there are a few other special operations questionnaires of Francis I. duPont involving the exchange in the spring of 1970 other thanthe one that has just been shown to you that have been marked in evidence so far.

My question to you. sir, is : Whenever you signed a special operations questionnaire of Francis I. duPont, did you believe it to be true and accurate?

A Absolutely.

Q Do you know a Frank Gaibaldi?

A Yes, I do.

Q How do you know him?

A Frank Garibaldi worked at Haskins & Sells a number of years ago, and I continued to know Frank from his involvement in the industry.

Q Did you ever meet him on the premises of Francis I. duPont?

A Yes, I did.

Q When was that?

A Starting the early part of 1970. The exact date I don't know.

MR. CAMHY: I want to make an objection,

your Honor. If your Honor will tell me that you want to encourage the idea of having defendants' case brought out with each witness I will not be bouncing up and down with these objections.

I will, however, make this one, and that is this really was not covered on direct, has nothing to do with what I did on direct, and has nothing to do with the part of the case going in now. It's not cross-examination.

THE COURT: We are almost at July 1, and I understand the new rules will go into effect in any event. I am going to allow it up to a point. I don't think Mr. Hyde or Mr. Brooks should take advantage of it by way of "cross-examination" getting their entire case in, but it does seem to me this question in any event about Mr. Garibaldi, which we have heard before, is not critical. I would suggest that if it's done, if a critical question arises, then we will deal with that, but it certainly seems to me it would save us a number of days sitting here if --

MR. BROOKS: I only have about ten minutes worth of questions with Mr. Gay, and I think it would be an imposition on everybody to bring him back again.

THE COURT: All right.

Q How many times did you see Mr. Garibaldi in the premises of the duPont firm?

A He was there a number of times. I don't know the exact number, because Frank didn't come in to see me specifically.

Q Did you know why he was there?

A He was there in connection with discussions that were being had between Hirsch and duPont regarding a possible get together in the early part of the year, and I presume that Frank was there to ask questions looking to our records and the financial condition of the firm. He did speak to Mr. Gentile during that period of time. He was the controller.

MR. BROOKS: No further questions.

MR. HYDE: No questions.

THE COURT: Mr. Pollack or Mr. Singer.

MR. POLLACK: No, thank you, your Honor.

THE COURT: Mr. Gay, would you be able to tell me what were the internal procedures in effect at duPont while you were there to eliminate various discrepancies? I understand you had a research term operative only after the audit date, is that correct?

THE WITNESS: No, sir. What actually

happened during that period of time was because of the audit in September, which is a very lengthy and complicated process that not only the auditors worked on but the entire staff must work on, so that during that period of time our staff was mainly concerned with the audit counts and the differences that were being discovered by the auditors, and spending all of their time in that area, and very little time in trying to develop new procedures for the day to day operation.

We had a department, a stock record department, that all of the entries at the end of the day would come up in an IBM run and they worked on balancing such as checkbook balancing to see they were balanced. But as far as counting of securities, except as Mr. Speicher mentioned during the different periods there was not an attempt being made to count securities on an ongoing basis, except in connection with some of the count differences that the auditors came up with.

We would periodically take one of those big differences, if they were large, and attempt to freeze the securities and recount them at a different period of time to see if we came up with the same differences.

THE COURT: Thank you.

MR. BROOKS: May I ask a question as a result of your exchange, your Honor?

THE COURT: Yes.

BY MR. BROOKS:

Q Mr. Gay, will you tell me, if you recall, what the requirement of the stock exchange rules was as to the frequency of a securities count for a member firm in the first six months of 1970? What was the rule during that period of time?

A I don't --

MR. CAMHY: Your Honor, forgive me, I was distracted. May I hear the question?

THE COURT: What was the rule of the stock exchange the first six months of the 1970 as to the frequency of the count of securities of a member firm?

MR. BROOKS: Let me expand that to take in 1969 and 1970.

A I don't believe there was a rule that insisted that the member firms must count securities on any basis because the auditors in their annual report would do a 100 per cent count of all securities.

MR. BROOKS: Thank you.

THE COURT: Thank you very much, Mr. Gay.

(Witness excused)

MR. CAMHY: Mr. Lee D. Arning.

L E E D. A R N I N G, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Arning, what is your present position?

A Managing partner of Tucker, Anthony and R. L. Day.

Q Were you employed by the New York Stock Exchange in 1969 and 1970?

A I was.

Q In what capacity?

A I was senior vice president for operations of the New York Stock Exchange.

Q Was Mr. Cunningham and Mr. Bishop below you in the chain of command?

A Mr. Bishop was below me. Mr. Cunningham was my superior.

Q What did your job involve during the years 1969 and 1970?

A Are we going to be here that long?

Q Well --

A Let me try to do it quickly for you. I was

responsible for the operations areas of the New York Stock Exchange which encompassed the entire operating departments, department of stock lists, secretary's office, floor department, department of floor procedure, department of member firms, department of stock lists, and the clearing corporation. It involved 3200-odd people.

Q Let's get to the department of member firms. That was one of the departments under your control, wasn't it?

A It was, yes, sir.

Q And that involved to a degree the operational problems and the financial health of the member firms, is that right?

A Yes. Among others.

Q During that year, 1969 and '70, were there a numberof member firms who were in either capital difficulties or operational difficulties arising from the paper crunch of '68 and '69?

A I am not sure what a number means?

Q I mean five or ten.

A Yes.

Q During that period didn't you have problems -- and I am talking about the latter part of 1969 and 1970--

weren't you personally involved in trying to help those firms solve their problems?

A I think that characterization would go for the exchange at large.

Q Yes. But you were involved in it personally as to, say, Blair and Bache and Hayden Stone?

A Well, I wouldn't say those any more than any others.

Q Yes, but --

A Or any less.

Q But some of those were having problems at that time and among them was duPont, wasn't it?

A Yes.

Q Didn't you tell me that this was a difficult period in connection with certain of these firms and that's what got your hair so gray? Do you remember that?

MR. BROOKS: I object to questions referring to firms other than duPont. The complaint doesn't relate to anything other than duPont unless they want to talk about Glore Forgan.

MR. CAMHY: I propose to show during this period, 1969, '70, '71, he was taking several firms through difficult problems and trying to find solutions to those problems for them. They were capital problems,

some of them solved by merger, some of them by liquidation. Mr. Arning has testified to all of this at length.

THE COURT: What's the relevance with regard to this case.

MR. CAMHY: It gets to the degree to which Mr. Arning involved himself in the merger between duPont and Hirsch and Glore Forgan.

THE COURT: Why don't we find out how he involved himself in this merger. If you are going to suggest to me I am going to find that out in what he did in other connections I don't believe I will.

MR. CAMHY: I want to show it was part of his general job at the exchange at the time.

MR. BROOKS: It is irrelevant.

THE COURT: I don't see how it is going to help us. As a matter of fact, it would appear to me that if that is so it ought to be something that Mr. Brooks would concede without any testimony about it.

MR. CAMHY: Very well, your Honor, I will proceed.

Q Mr.Arning, were you involved in a professional way with the capital problems of duPont during the spring of 1970?

A Mr. Camhy, as the senior officer of the

exchange in that area, the matters that arose in the department of member firms of significance were related to me, and in that connection I would have been aware of financial difficulties, operating problems, or whatever existed at any member organization.

THE COURT: Wasn't that part of your responsibility?

THE WITNESS: It was, sir, yes.

Q Did you think that the duPont-Hirsch merger was a good merger for Hirsch, duPont and Glore Forgan? Did you think it had a good fit?

MR. POLLACK: Objection, your Honor.

THE COURT: I have learned that that is a relevant inquiry, Mr. Pollack, so the objection is overruled.

A You confuse me, counselor. When you said Hirsch, duPont and Glore Forgan, I was a neutral observer.

Q I mean for all three firms.

A Can I restate the question?

Q Yes.

A Did I think that this combination offered a potential on a combined basis for a successful operation? I would answer that affirmatively.

THE COURT: You would answer how?

THE WITNESS: Affirmatively.

Q Didn't from time to time during this period Mr. duPont tell you that given the right circumstances he could raise more capital?

A Well, I think in fairness to Mr. duPont that has to be put in a little more different context. The exchange was seeking additional capital. Mr. duPont was the medium by which that was to be accomplished if it was to be at all.

In his appearances at the exchange one of the conditions that Mr. duPont indicated, and he was optimistic about obtaining capital, was that given the proper circumstances, not limitless, but ample capital was available so in that context what you said was probably so.

Q And the proper circumstances would be an entity which had good profitability potential that would attract capital, is that right?

A That is true. That would be one.

Q All right.

Now, didn't the Hirsch, duPont, Glore Forgan merger contain as far as Mr. duPont and as far as you were concerned many of the attributes of that kind of

a combination?

A I think the answer to that is yes.

Q Didn't you regard it as such at the time?

A I did.

Q I show you a memorandum from Mr. Dominach, it's Exhibit 167 (handing). You received that memorandum, didn't you?

A It's directed to Mr. Cunningham and myself and I am certain that I did, yes.

Q And did you -- you did not accept this request, did you, or this suggestion in the first paragraph of that memorandum?

A Well, when you say accept --

Q You did not accede to it.

A Well, it was a subordinate reporting to me and he gave me information thatI took into consideration.

Q And discounted and ultimately permitted the transaction to proceed, is that right?

A I wouldn't go along with any of those questions.

Q All right, let me put it to you this way: Did you act to follow his request?

A Well, counsel, that's like one of your assistants giving you some legal advice and you choose as superior to proceed differently.

Q All right.

A That's the nearest likely approach to this that I can imagine. These were facts given to me --

THE COURT: Wait a minute, Mr. Arning. The question I think is fairly simple, and I think you can answer fairly directly. Did you or did you not follow the advice that is set forth in the first paragraph of that memorandum? The answer can be yes or no.

THE WITNESS: Well, your Honor, I don't consider this advice.

THE COURT: Well, the suggestion --

THE WITNESS: Did I act differently than that first paragraph or if I indeed one can deem what I did to be an act because I am not sure you can. It's not consistent with the recommendations that were set forth here.

Q Well, did you take any action to stop the merger?

A I don't know what action I could have taken, counselor.

Q Well, you could have advised the parties that the exchange did not think the merger would be good for either firm because, or any of the firms because of the operational exposures of F. I. duPont.

A And because this memorandum was sent to me?

Q Yes.

A That's absurd.

Q Well, when you read the memorandum did you feel that any of the statements that were in it were factually not correct?

A Mr. Camhy, as a man who had many people reporting to him and who requested the information set forth in the memorandum that is now in front of this witness, I suggested, absorbed and utilized the facts that were contained in this.

And let's assume for the record purposes that some if not all of these were in some form known to me as well as a good deal of information that was not in this memorandum.

And if you are attempting for me to construct whatever happened to duPont, Glore Forgan on the basis of this single memorandum you are grossly in error.

Q Mr. Arning, let us go with the assumption that there were other factors which made you feel that notwithstanding what was in this memorandum you thought that you should not stop the transaction or try to stop the transaction if you could.

A All right.

Q Now, what I would like to ask you is: Can you tell me what those factors would have been that would have been overriding of the con. .tion set forth in this memorandum?

A Well, I think the first paragraph of this, which I just scanned a moment ago, established the point of departure here. What Mr. Dominach did was analyze special operations questionnaires which had been in our possession, which had been analyzed by our examining department and which all the officers of the exchange had seen.

His two -- after this he says there are two things that you ought to do and you ought to delay it until you do it, and one is assurance of additional capital. I think I did that.

The second was that duPont's operations exposure be identied and substantially reduced.

Q Well, now, let's get to the first one.

A All right.

Q As I understood it you felt that the way that the capital would come in is if the merger came through, that is that what Edmond told you, or what the duPonts told you was that if they could get the merger

through they would have the kind of an entity which would attract capital.

A I don't think I ever said that.

Q Well, didn't Edmond assure you that --

A One of the conversations that Mr. duPont idenfied as being significantly helpful to the raising of sizable quantities of capital with an oportune situation. This clearly fit that letter definition.

Q All right. So then this --

A But it was not what you said.

Q Well, I am sorry, I will accept what you said. And in fact, I want to show you a document, and it's Exhibit 168. I don't know whether it't in yet.

MR. CAMHY: I offe Exhibit 168.

MR. HYDE: Against the New York Stock Exchange?

MR. CAMHY: Against the stock exchange, yes.

MR. BROOKS: Has the witness identified it?

MR. CAMHY: Well, I am going to show it to him. He identified it on deposition (handing).

Q Mr. Arning, is this a letter that you wrote

to Mr. Latour?

Yes, I believe it is.

MR. CAMHY: Your Honor, I offer it.

MR. BROOKS: No objection.

THE COURT: All right.

(Plaintiffs' Exhibit 168 was received in evidence)

Q Now, shortly after receiving the Dominach memorandum and just the day prior to the merger, you wrote this letter, didn't you? July 1? The merger was July 2, Dominach's memo is --

A June 24.

Q Okay.

Now, looking at the second part of the second paragraph:

"The exchange has been on notice from Mr. Edmond duPont that substantial sums of additional capital were available when the right quote situation was at hand. You and I agree that the present combination of Francis I. duPont & Company with Glore Forgan and Hirsch & Company is just that situation. While I know that you are providing us with daily pro forma capital computation and this figure at the moment is most encouraging, that additional capital is mandatory."

Now, this does tend to confirm what you just said, Mr. Arning, doesn't it?

A I am glad you feel that way. Yes.

Q And that is that in your discussions with Edmond about where the firm was going and in the exchange's discussions with him about where the firm was going that previous spring he said that he could get capital for the right situation and you felt thatthis was the right situation.

A So I did.

Q So that that tended to meet what you felt was -- or that tended to meet what you felt was -- or that tended to override the considerations, the other considerations mentioned by Mr. Dominach in his memorandum.

A I don't buy that.

Q Well, is --

A I don't buy what you just said.

Q Well, that was one of the factors which made you override that memorandum.

A It was one bit of information available to me that was not available to Mr. Dominach.

Q All right.

Now, can you tell me whether during that spring you had a familiarity with the elements which made up

the good fit between Hirsch and Glore Forgan and duPont? That is, did you know these elements?

A Well, I am wondering what you specifically mean by --

Q Well, was it a good fit? Was it a sympathetic merger of things which work together well?

A Let me try to answer that. And in order to do that you have to put this whole thing in perspective of what was going on around you, and when I say that I think the general market conditions are a material consideration, and at the time we had had a severe decline in the market. We had had a drying up trading volume, and an overall market condition not condusive to expansion activities of member organizations.

At the same time the firms at large had spent large sums of money to automate, to develop processes to improve paper handling and in so doing had enlarged their staffs to do this kind of thing.

I think some of the testimony Sam Gay gave a short time ago relates to just the kind of expenditures that had to take place all over the street.

Now, with that as a backdrop with the declining market existing we had a clear cut possibility of operating losses, if they hadn't developed increasing,

and if they had developed expanding even further.

Against that we took a situation here that in my opinion, and mine alone to be sure, offered the opportunity of three member organizations of vast combined savings, a mix of business combining that looked from the point of view that I sat at as contributing significantly to the overall role of a single firm.

You had, in the case of duPont Glore Forgan -- in the case of Glore Forgan one of the primary investment banking organizations. Neither Hirsch nor duPont had any such factor present in its case.

In duPont's case you had one of the leading distributive organizations in the industry. I don't know how many offices it had. I'd suggest they ranged upwards of 70 to 100. It was a master type of structure to provide distribution for the banking side that was contributed from Glore Forgan.

And then from the Hirsch point of view you had marketing areas almost specifically identifiably difference from those that existed in the old duPont organization. And I am thinking specifically of the lower south and I ma thinking of Florida. I am thinking of Florida and I am thinking of Europe.

And you had the fact that at the Hirsch

organization a number of the management individuals were now somewhat older, not as well as they had been and I felt that in addition to those ingredients we were going to be able to look to a strengthened management team operating a stripped down operation that was going to provide a greater level of profitability and provide a means for the combination and real savings in the operations area. To weed out the softer spots and to have all the attributes of a potentially not just viable but very strong member organization.

Q All right.

Now, earlier that spring another merger for duPont had been suggested to the exchange, hadn't it? and that was a merger with Blair?

A Well, I think I testified in the deposition I didn't even recall it.

Q Well, do you remember that a merger with Blair was considered and rejected that spring as not making any sense?

A I may be mistaken but my recollection was dim and I had no significance of it at all.

Q Would you have gone along with a merger with Blair at that time?

MR. BROOKS: I object, your Honor. It's

purely hypothetical. The witness doesn't recall such a fact. Besides, what's the difference?

THE COURT: I think that's right. Objection sustained.

Q Well, if the Glore transaction -- if the Glore element hadn't been in this would you have gone along with this merger as much as you did?

MR. BROOKS: Same objection, your Honor. Hypothetical. Irrelevant.

THE COURT: Objection sustained.

Q Were you familiar with the capital problems of duPont during the latter part of December and early part of January?

A What year?

Q 1969, 1970, it's deficiency, $17 million.

A Help my recollection. Is this shortly after the audit results for '69?

Q Yes.

A Yes.

Q So then you did concern yourself with duPont's capital problems?

A I never testified otherwise, that I am aware of.

Q And did you try to keep up with this on a day-to-day basis, or on a week-to-week basis, at least?

A Well, I could clarify that for you easily. The responsibility for the observance of the financial condition, the operations, etc., of member organizations lies in the department of member firms. We have an extremely capable leader of t[illegible]t department, and a staff, an outstanding staff of examiners.

They were the front-line people who were dealing with this, and I was in constant contact with them, and I got information. I was in a different physical location than they were, but I certainly was acquainted with what was going on.

Q Well, wasn't duPont one of several firms which were in what the Exchange considered serious capital condition problems during that period?

MR. BROOKS: What period?

MR. CAMHY: Late '69, early '70, through June of '70.

A Well, I --

Q Wasn't there a list of firms that you were watching because of this problem?

A There were firms that the Exchange watched for capital and operational problems, yes.

Q Wasn't duPont one of them?

A I have said in that period, yes.

Q Wasn't one of your concerns during that period the solution of duPont's capital problems?

A One of my concerns?

Q Well, one of the Exchange's concerns.

A Well, can I substitute"resolution" for "solution"?

Q Resolution, yes.

A Yes.

Q And in that were demands or requests to Edmond duPont and to others as to raising more capital, wasn't that one of the things that was going on?

A There were those requests made, yes.

Q And wasn't this merger part of a program for the resolution of that problem?

A The merger itself?

Q Yes.

A The merger didn't come from the New York Stock

Exchange.

Q No, but wasn't the merger considered by the Exchange as an event which would help resolve those problems? Just going back to that letter about the attraction of capital when the right thing came --

A Yes, but, you see, these things aren't that simple, counselor.

This event, the combination of these enterprises was brought to the Stock Exchange by the people involved. It didn't emanate from the Stock Exchange, to my knowledge.

Q But the --

A When it became clear, and I think you know already that there had been a number of chats back and forth on these kinds of things, about which the Exchange was not involved, but when it became clear that this was going to be the real thing, we took steps to see to it that we would have information about it, that we would know what was going on, that the procedures that would be followed would be established ahead of time, that we'd know what the pro forma capital requirements were, blah, blah, blah.

We, yes, went into depth to find out what was going to happen, but it was something literally presented to us.

Q But it was something that you could have stopped

if you wanted to.

A I don't know how.

Q Simply by telling the firms that you wouldn't let them do it because of duPont's operational problem --

A After what I just described as their potential? I would be having another lawsuit defending that.

I don't think I could have done such a thing.

Assume, if you will, that the combined enterprise met the Exchange's requirements for member organizations from A to Z, which, so far as I know, they did.

Q Well, assuming Mr. Dominach said --

A I can't assume Mr. Dominach said it at all. He was a consultant at the Exchange; he was not employed by it directly. He was familiar with many of its rules.

That was not the spot I was in, Counsel.

Q Did you know Mr. Chenet made the same recommendation?

A I have no idea what Mr. Chenet may have made.

MR. CAMHY: Your Honor, may I read from the deposition, please?

MR. BROOKS: I object to reading from the deposition while we have a live witness on the stand.

It's not an admission of the Exchange.

MR. CAMHY: I think it is.

MR. BROOKS: I disagree --

MR. CAMHY: I am offering this as some inconsistent --

MR. BROOKS: You are offering it as inconsistent testimony? May I ask with what testimony of this witness?

MR. CAMHY: The testimony he has given.

MR. BROOKS: What testimony?

THE COURT: Well, come on, Mr. Brooks, he doesn't have to answer that. What he has to do is read the question and if it's not inconsistent you make your objection then.

MR. BROOKS: I would like the Court to know that at the time of the deposition Mr. Arning was not an officer of the Exchange, so it cannot be an admission of the party.

THE COURT: He is not reading it for that purpose, as I understand it; he is reading it as an inconsistent prior statement.

MR. BROOKS: I will listen with that in mind.

MR. CAMHY: It's a deposition called Deposition Exhibit 102.

Gentlemen, I plan to use Exhibit 102, which is not a premarked exhibit, but it was 102 on the examination of Chenet, but it was used on the Arning examination before

trial.

I will have copies made, but I think you all have access to it.

MR. BROOKS: We have our copy, Mr. Camhy. That won't be necessary for us.

MR. CAMHY: Thank you.

Q Look at Exhibit 102, please (handing).

MR. CAMHY: Now I would like to read at Page 163.

"Would you look at Exhibit 102, please, Mr. Arning, which is a memorandum dated May 13, 1970" --

"Q Would you look at Exhibit 102, please, Mr. Arning, which is a memorandum dated May 13, 1970" --

MR. BROOKS: May I interrupt for a moment, Mr. Camhy? You cited us Page 163 --

MR. CAMHY: No, 63.

MR. BROOKS: Would you give us a moment?

MR. CAMHY: Sure.

"Q Would you look at Exhibit 102, please, Mr. Arning, which is a memorandum dated May 13, 1970 from Fred Stock in respect of the possible combination of Blair and duPont?

"A Blair and duPont?

"Q Yes.

"A Yes, I see it.

"Q Did you receive a copy of that memorandum?

"A It was sent to me.

"Q Do you recall considering the problems raised by that memorandum?

"A I don't think they were given much. There wasn't any sense to this. It was an easy answer."

I would like to show the memorandum to the Court.

THE COURT: You have read it. I will --

MR. CAMHY: No, I was not reading from the memorandum. I was reading from testimony.

MR. POLLACK: If your Honor please, our opponents have no particular interest in this aspect of the testimony, but I think in fair context to the lawyers Mr. Camhy ought to read through Line 22, because this is the subject about which Mr. Arning testified a matter of minutes ago.

THE COURT: Well, as I heard his testimony, when he was asked a question here, he said he had no -- as I recall he had no knowledge of --

MR. POLLACK: In that respect I suggest that he read through Line 22, and you will see that he gave the same answer on his deposition. That's why I say I think fair context requires that Mr. Camhy complete the next

several questions and answers.

MR. CAMHY: The memorandum indicates that it was sent to him.

MR. BROOKS: He didn't deny that, reading the memorandum. If you will read to the next page, down to Line 11, it says there he wouldn't have recalled it unless he had been shown the memorandum.

MR. CAMHY: Well, doesn't the memorandum indicate that it was sent to him?

MR. POLLACK: I think the question was whether Mr. Arning knew about the Blair-duPont merger.

The next series of questions and answers which Mr. Camhy did not read should be read.

If I may, with the permission of the Court.

MR. CAMHY: Well, I have no objection. My only attempt on this is to show that the memorandum was sent to him.

THE COURT: Well,Mr. Camhy, I have been misled because, as I heard it, I assumed that you were reading it for impeachment purposes, and I certainly accepted it as being appropriate for impeachment purposes, because it was different than what his testimony was here.

MR. CAMHY: Your Honor, my impression on the testimony was that he denied any recollection of the

whole event, and my only attempt was to show this memorandum which was sent to him on that subject; that's all.

MR. POLLACK: If your Honor please, merely in the interest of clarity, the next series of questions and answers are the question at Line 12:

"Q Do you recall considering the problems raised by that memorandum?

"A I don't think they were given much. There wasn't any sense to this. It was an easy answer.

"Q Yes, but evidently some people on the staff had been thinking about it.

"A Well, that's why there are V-Ps and other people, I guess. I don't recall it ever having been given really a lot of consideration.

"Q By you?

"A By me."

T3c

MR. BROOKS: May I continue your Honor?

MR. POLLACK: I believe that that is entirely consistent with what the witness had said a matter of minutes ago.

THE COURT: All right.

MR. POLLACK: I raise the point not because it affects out clients but because I don't think that what Mr. Camhy has done is consistent with the use to which he purports to put a deposition.

THE COURT: All right, thank you, Mr. Pollack.

MR. BROOKS: And if you read over halfway down the next page it becomes even clearer on the same point that Mr. Pollack is making your Honor and I join in his objection.

MR. CAMHY: The only point I wish to make is that to the extent that this memorandum is a stock exchange document which was sent to him and is on the letterhead of the exchange and has his name on it and deals with this subject it is something that apparently was brought to his attention and at least to the degree that he received this was considered by him.

THE COURT: Well, all right, if that was your purpose you had me in the dark about it. It seems to me that that purpose could have been very well served by showing him

that document and -- it is not a part of the record, or making it a part. But let's proceed.

MR. BROOKS: If Mr. Camhy is offering this I will object on the grounds of relevancy. I don't see what a Blair-duPont merger if it was considere by anybody has anything to do with this case.

MR. CAMHY: The memorandum does have this much to do with the case. It tends to show that senior officers of the exchange thought it had something to do with the mergers and they had some input about whether it should be encouraged or discouraged and they did consider the various economic effects of the mergers and whether it would strengthen these firms and whether to encourage them or discourage them.

MR. BROOKS: It might be relevant if Mr. Camhy was suing on behalf of investors of Blair, your Honor, but it is not here.

THE COURT: Let me see that, Mr. Camhy.

MR. CAMHY: Yes, sir (handing).

THE COURT: All right, I will receive it. I had thought that that was an area in which there would be no dispute. I had assumed that the stock exchange in view of this kind of a problem would of course take some responsibility for attempting to resolve it and to take

action to rectify it if they could. I didn't think there was going to be any dispute about that until Mr. Arning's testimony. I will accept it.

MR. HYDE: Mr. Camhy, I take it this is not offered with respect to Haskins & Sells.

MR. CAMHY: No, it is not but it needs a new exhibit number.

xx (Plaintiffs' Exhibit 261 received in evidence.)

THE COURT: Gentlemen, why don't we take a ten-minute recess.

(Recess)

BY MR. CAMHY:

Q Mr. Arning, during the 1969-1970 period wasn't there a program under way to help certain major firms which were having capital and operational difficulties? Don't you remember referring to that on your deposition?

A Well, yes, sir, I do. The problem with depositions though is the lawyer asks the questions and gets responses to those questions but never gets the context. I know what you are referring to and if I could take a liberty here of explaining it I will try to.

Q Okay. I would like to just insert two or three words to see if you could cover them and I have taken them from your deposition.

A Please do.

Q One of them is the concept of radical surgery that you used referring to what had to be done to some of these firms.

THE COURT: What kind of surgery?

MR. CAMHY: Radical surgery as what has to be done to some of these firms.

MR. BROOKS: I object to the question your Honor. We should be concerning ourselves with duPoint and not some of these other firms.

MR. CAMHY: Your Honor, I am trying to show that this merger formed part of his overall job in trying to see to it that certain major firms who were experiencing difficulties could be given whatever assistance--

THE COURT: Well, I think that's permissible, Mr. Camhy, but I don't understand, I think that's permissible but it does appear to me that you should be concentrating on what he didwith the two companies.

T4a

MR. CAMHY: I am. But I am only trying to make sure it is known this was part of his official duties.

THE COURT: Suppose it wasn't? What difference would that make?

MR. CAMEY: There is a contention in this complaint that the exchange did merely more than just stand by in this merger, that it knew about the merger and that it felt the merger was a good thing, and that it tended to observe the merger and encouraging the merger as part of achieving some objective that the exchange had in seeking to resolve duPont's operational difficulties.

THE COURT: I think argument over it will take longer than for you to ask the question, so ask it. The objection is overruled.

MR. BROOKS: I will save him the trouble, your Honor. I will agree Mr. Arning has put in the record proof of everything Mr. Camhy had just said, except that the exchange encouraged this merger and I think he testified he was neutral.

THE COURT: You concede that was part of his responsibilities.

MR. BROOKS: What was part of it.

THE COURT: Everything except the word encouraged.

MR. BROOKS: I concede it was part of his

responsibility to know what was happening, to enforce existing exchange rules.

THE COURT: All right. You may ask the question.

Q Mr. Arning, do you remember discussing a program during the year 1969, '70, and continuing through '70, of dealing with certain firms who were experiencing major capital and operational difficulties, and do you remember referring to the fact some of them needed radical surgery, you were able to save some, not others, and you were proud of the fact that you did?

A Okay, with the caveat I had a moment ago, can I put that into my --

Q Yes, please.

A Forgive me, your Honor, I just think the background here is vital to the picture. For the record, the market low occurred in May of 1970, the bottom of the Dow-Jones average as a measure. I think if you look at volume it similarly hit its low point in May of 1970. My responsibility in an overall way relating to the department of member firms in light of the general experience that had occurred in the industry of operating losses in the latter part of 1969, and let's say the first quarter of 1970, then having been in the record, coupled with the fact that at some organizations a fair amount of their capital

was in securities form, the decline in the market value which had reduced their capital appreciably, the senior officials of the New York Stock Exchange, the head of the department of member firms, determined that a proper course of action would be in dealing with a very large segment of firms that may or may not earlier have had any difficulty, been asked to provide the exchange with details that would demonstrate to the satisfaction of the exchange their ability to operate at not less than a break-even basis, given the reduced volume that occurs in the second and third quarters most years.

So with that as the background, to the questions you asked me in the deposition, some of those firms elected, some John Cunningham elected, some Mr. Bishop and other coordinators of the department of member firms of the exchange worked with to accomplish these broad objectives I have just outlined. There were some you asked me about that I deal with, and they were just X number of firms. One of them was duPont. There were few in number that I handled. They were large firms. But that was what was involved in that.

Does that get to the background of that question satisfactorily?

Q Yes. Now, do you remember referring to this job as

something which in a jocular manner, but nevertheless with a certain amount of truth, got your hair that gray?

A I have a tendency to be that way, and I did, and I used radical surgery, I recall that term because I think you inquired what was necessary and the radical surgery related to the need for the member organizations in these areas to pare back, apply the surgery, which was the analogy I was using, to their operating costs then prevailing to get to a point where no matter what the cost was they could break even. The analogy is if you break even you are no longer losing capital.

Q I think you also conceded on deposition the merger route was the answer to certain firms' problems and it looked to you like this was to duPont.

A I don't remember the latter. I recall the former, a merger route would solve some of the organization's problems, but I don't recall the latter.

Q Do you recall also that you regarded the duPont merger favorably as being part of the solution to the problem? I think you said that, Mr. Arning. I will have to check now.

A I just testified, I think --

THE COURT: He just testified to that.

Q So that we don't have any problem with that?

A The record there is clear.

Q Wasn't the latter part of 1970, or wasn't all of 1970, a pretty difficult year for the exchange in terms of the possibility of major capital problems in very substantial firms? I am talking about Goodbody, Hayden Stone, duPont; you had a bad year on your hands that year, didn't you?

A Something like the vintners.

MR. BROOKS: I object to the question. I don't think it is relevant to duPoint. The other firms were after Dupont's.

THE COURT: The objection is overruled.

A May I have the question?

Q Didn't you have several major firms in trouble, capital trouble, Goodbody, Hayden Stone, duPont, Blair, and even to a slight degree Bache?

THE COURT: When?

MR. CAMHY: That year.

THE COURT: 1970?

MR. CAMHY: Yes.

A I don't know how to charactorize a period like a year, and things like member firms in general, but --

Q Didn't you tell me that was the year that made your hair gray? I think that's what you told me.

A I forget the point of rerence to that. But in any event, I won't dispute the fact that year was a difficult year in dealing with a number of member firms.

Q Isn't it a fact that if a major firm like duPoint went down it might take many other firms down with it because of the relationship in trades between them and inability to satisfy outstanding debts?

MR. BROOKS: Objection. No relevance to the issues in this case.

THE COURT: The objection is overruled.

A The question was--

Q If a major firm like duPont went down it might take other firms down with it because of its inability to satisfy debts as between firms. That is, there would be a major loss of confidence and a major inability to satisfy complaints for deliveries, moneys due, etc., and there would be a real problem that might affect many other firms.

A I don't know how to speculate on the scope of what might happen.

Q It would have been a problem of the first magnitude for the exchange?

MR. BROOKS: Same objection, your Honor.

Q Didn't you have Goodbody trouble at the same time?

THE COURT: I am overruling the objection to the question that you have asked. Now, withdraw one of the questions, in any event.

MR. CAMHY: I will withdraw the last question.

Q In the light of duPont's relationships with many other member firms in Exchange transactions and other commercial transactions, and in the light of the numerous customers that duPont had all over the country, wouldn't its liquidation or failure have caused very substantial problems for the securities industry as a whole and the New York Stock Exchange in particular?

MR. BROOKS: Same objection.

THE COURT: The same ruling.

THE WITNESS: Well, your Honor, I find great difficulty sitting here in 1975 to speculate what might have occurred at a given point in time. I do think your record ought to show that the resources of the Exchange in many cases are substantial in terms of people and in terms of inventiveness, and I, sitting here, out of the blue can conceive that we might very well have established a number of interim-type of clearances to settle a lot of the inter-broker problems, were those type of things to arise, but never having hit the light of day, to try to answer that strains my ability.

What we would have done, I don't know. We sure would have had to work at something to do it.

Q You sure would have had a big problem, wouldn't you?

A We would have had to solve a problem.

THE COURT: I didn't understand the question to be directed to that. I thought the question was to talk back to 1970.

The question was whether or not, if there was a failure at duPont, as to whether that wouldn't have caused some major upheaval, or whether you considered it as such in the industry, and not speculation, but your thinking at that time.

THE WITNESS: Your Honor, if I may, counsel has already pointed out there were other firms that occurred that year. All of those were resolved. There was no loss to customers of anything.

So let's put the duPont thing at the front of that chain, and say that would have been one of the others that would have been solved.

Q Yes, but they were resolved either through saving the firm somehow, or by something that existed then, and that was called the trust fund; isn't that right?

A Well, the manner in which they were resolved

did vary, sure.

Q Didn't you tell me on deposition that you had spent $84 million of the Exchange's money in satisfying various claims out of the trust fund for firms that had failed?

A Whatever the number is is clearly in the record and it's substantial.

Q Wasn't it around $84 million? Didn't you tell me that?

A I don't recall the number I gave you then, sir.

Q Was it close to $84 million?

A It's large, very large.

MR. CAMHY: Your Honor, I have $84 million in the deposition. I must say when I read it I was shocked, I didn't realize it would be that large.

THE WITNESS: It's in the annual report. The deposition was a year ago. I don't remember the number.

MR. CAMHY: I questioned people whether the stenographer had mistranscribed it, but they assured me that was the number testified to.

THE WITNESS: A rather substantial effort was made, no matter what the number.

MR. BROOKS: We are a long way from a disclosure case in July of 1970.

Q I just want to make this firm.

The Exchange did spend numbers of that magnitude in satisfying the claims of other firms that had gone down, isn't that so, out of the trust fund?

A Yes. Whatever that number is.

Q What were the total commitments of duPont at this time?

A I am afraid I don't know.

Q Do you know that it exceeded hundreds of millions?

A I don't know what you mean by "commitments."

Q Obligations.

THE COURT: I am at this point inclined to agree with Mr. Brooks. I don't think this has any relevance to this case at all.

I disagreed with him before, because it does seem to me that the actions that the Exchange took in its concern about the industry was within the area of this litigation, at least for me to understand what's involved, but that they paid off claims in an attempt to save the public in some context I don't think has any relevance to this case.

MR. CAMHY: I suggest, your Honor, that the reason the paying of claims is relevant is because they

paid off claims because they felt that that was necessary to preserve the institution of the Exchange, and that in the duPont case they realized that with two or three like these, there would be no money, there wasn't the kind of money to pay these claims.

THE COURT: That is highly speculative, Mr. Camhy.

They paid off claims, and I assume that they felt that that was their public responsibility.

MR. CAMHY: Until they ran out of money, your Honor, and I am suggesting they would have run out six months sooner, and would have had SIPC six months sooner if duPont had gone down then.

THE WITNESS: May I ask a question, your Honor?

THE COURT: Without having one put to you, Mr. Arning, I prefer not.

MR. CAMHY: I have only one more question, your Honor.

THE COURT: All right.

Q In your work in duPont, did you rely on Haskins & Sells for information as to operations of the firm during that spring to any extent?

A During that spring?

Q Yes.

THE COURT: You mean the spring of 1970?

MR. CAMHY: Yes, sir.

Q Did you rely on Mr. Lill of Haskins & Sells as I think you said your eyes and ears?

A Yes. I am trying to get the same time period in focus. Haskins & Sells was helpful to me and to the Exchange in the course of using its audit functions at duPont, and Hirsch, and everybody else.

Q As a source of information that spring?

A I met with Ed Lill, yes.

Q And did you try to get from him -- did you use him as an informational source as to the operations there?

A Mr. Lill was helpful in every respect.

MR. CAMHY: That's all I have, your Honor.

THE COURT: Mr. Brooks, do you want to question the witness?

MR. BROOKS: I have no questions of this witness, your Honor.

THE COURT: Mr. Hyde?

CROSS-EXAMINATION

BY MR. HYDE:

Q Mr. ARning, with respect to the last few questions concerning Mr. Lill, when you said "that spring," can you

distinguish between the period before and after the duPont merger of July 2, 1970?

A In what way?

Q With respect to the services rendered by Mr. Lill?

A I met with him on a continual basis, or I did then.

Q What did these meetings consist of?

A At one point we formalized them rather substantially, it seems to me, and I think I wrote Haskins and asked them to do rather specific things, but prior to that why, I think we met, I don't know whether it was on a regular basis, but frequently, to review with Ed the status of recovery efforts, research, and so forth.

Q I show you a letter you wrote, I believe, put in evidence as Plaintiffs' Exhibit 232, a letter dated August 4, 1970, and ask if that's the letter you have in mind.

A Yes. Without reading all of it, this is the letter. That's the formal assistance that we sought.

Q And that was commencing in August of 1970?

A I believe so, yes.

MR. BROOKS: Excuse me, Mr. Hyde. We don't have that being received in evidence.

THE CLERK: It wasn't.

MR. HYDE: I may be in error. I thought it was. I believe it was shown to Mr. Lill in his testimony yesterday. I thought it had been offered and received.

MR. BROOKS: I have no objection to it going in evidence.

MR. HYDE: I have no further questions.

THE COURT: Any questions?

MR. POLLOCK: No questions,your Honor.

MR. CAMHY: No further questions.

THE COURT: Thank you, Mr. Arning.

(Witness excused)

MR. CAMHY: May we approach the bench for a moment?

(At the side bar)

MR.CAMHY:I misjudged my time and I have run out of material, and I would like to be able to start first thing in the morning. I don't know where to go from here now.

MR. BROOKS: We have Mr. Bolos and Mr. Bishop standing by for Mr. Camhy to call. They have been in the back of the courtroom.

MR. CAMHY: I won't need Bolos.

MR. BROOKS: Can I excuse Mr. Bishop?

MR. CAMHY: Yes, but I won't need him until Monday.

MR. BOOKS: Why not have him now?

MR. CAMHY: I can't. If I start with Mr. Bishop, I could never finish with him this afternoon.

MR. BROOKS: Pick up tomorrow. Mr. Bishop is scheduled to go to the West Coast.

THE COURT: This case has gone on, and I really think if you are going to use Mr. Bishop you ought to use him now. He is here.

MR. CAMHY: He was here as an observer for several days. We couldn't get him out, as I recall, for awhile.

THE COURT: He is available now, and there is an hour left. I have another matter at 5:00 o'clock. I want my time used.

MR. CAMHY: I understand that, your Honor.

THE COURT: Therefore, if he is here and you are going to use him, I think you ought to use him now. If you don't want to use him now, then don't use him.

MR. CAMHY: Very well, your Honor.

(In open court)

MR. CAMHY: Mr. Bishop, please.

ROBERT M. BISHOP, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Bishop, I show you two letters dated November 3, 1970, and a corrected version of it dated November 4, 1970. They are Exhibits 198 and 199, premarked.

I ask you whether you can identify these two.

A Yes.

Q Did you send those letters?

MR. BROOKS: Your Honor, I object to the line of inquiry because the date and the subject matter of these letters is too far removed from our disclosure case, referring to July 2, 1970.

MR. CAMHY: The letters deal with the capital problems of duPont in the latter part of October and November of 1970. The reason they are being gone into with Mr. Bishop has to do with the contention apparently made by Mr. Brooks that when our people subordinated their positions and accepted this subordinated note of duPont Glore Forgan to the new group that was coming in, that somehow that was some waiver on their part of

any claims and that they did that voluntarily and that they didn't have to do it.

What I am trying to show is that duPont was in very serious capital trouble at that time.

THE COURT: What are the exhibits?

THE CLERK: 198 and 199.

MR. CAMHY: Was in capital trouble, the Perot merger resulted from great capital pressure on the firm, and that my clients going along with the Perot merger and accepted this subordinate note did so under the very pressures which caused the Exchange to put the pressure on duPont, that is, to raise capital, and this was not something they did voluntarily, but something they did because the situation in duPont at that time was really quite critical, and that there were serious questions if the Perot merger didn't go through whether the firm could have ever paid them their capital or would have been permitted to do so by the Exchange.

MR. BROOKS: Your Honor, if that is the only purpose of the offer of these exhibits I do not object to their admission for that purpose only.

THE COURT: All right.

MR. BROOKS: And that is to the issue that we have raised of waiver.

THE COURT: All right.

MR. CAMHY: Thank you.

MR. POLLACK: If your Honor please, again I rise to make an objection to not deal directly with our own clients. However, as I understand the contours of the remaining case it's that the exchange and Haskins & Sells failed to disclose certain facts tothe Hirsch people on or before July 2, or alternatively told them things on or before July 2 that were false. I believe both of these documents as of several others, deal with matters in futuro that do not relate to the disclosure case insofar as there is the theoretical possibility of a cross-claim over against our clients we will object to these being offered against Haskins &Sells and the exchange.

THE COURT: All right, the objection is overruled.

(Plaintiffs' Exhibits 198 and 199 were

received in evidence)

MR. CAMHY: Has Mr. Bishop been given a set of these?

MR. SPINOGATTI: Yes.

Q Mr. Bishop, do you mind if I stand there and kind of look over your shoulder?

A Yes.

Q Well, looking at those two letters, Mr. Bishop, do you recall having sent them?

A I caused them to be sent.

Q Yes. And you recall then that thecapital problems of the firm at that time justified their being sent?

A Yes.

Q Thank you.

Now, I show you Exhibit 208. Did you --

A What does it look like?

Q It's a letter.

A I don't have it.

Q Would you look at Exhibit 208, please (handing). Did you send Exhibit 208?

A Yes.

Q And did the capital problems of duPont cause you to send Exhibit 208?

A Apparently the prospective capital problems.

MR. CAMHY: Is Exhibit 208 in evidence? I offer it.

MR. BROOKS: Same objection, your Honor.

MR. CAMHY: I offer it on the same basis, your Honor.

THE COURT: All right, it's received.

(Plaintiffs' Exhibit 208 was received in evidence)

Q Now, would you look at Exhibit 211 (handing). Is this a memorandum that you wrote?

A Yes.

Q Was there under consideration at that time the acquisition of a substantial investment in duPont by the Perot firm?

A Yes.

Q Now, was the purpose of that investment, in part, a method of trying to resolve major capital problems of duPont at that time?

A Yes.

MR. CAMHY: I offer Exhibit 211.

MR. BROOKS: Same objection.

MR. CAMHY: It's offered on the same basis.

MR. BROOKS: That the limited basis that we discussed before?

MR. CAMHY: Yes.

THE COURT: All right, it is received.

(Plaintiffs' Exhibit 211 was received in evidence)

Q Had the exchange been trying to get duPont and the duPont partners to raise more capital during the period from the latter part of August through the early part of November?

A Yes.

Q Hadn't there been several serious discussions in which the exchange seriously advised the duPonts that they were in capital difficulties to a degree made worse by the, what was learned from that audit of September '70 and --

A I wouldn't accept that description.

Q Okay.

Why don't I just put it this way: That the capital situation of duPont was serious and that Mr. duPont and his partners would or should find more capital sources to properly capitalize the firm.

MR. BROOKS: I object to the form of the question.

THE COURT: Objection sustained.

Q Had the duPont partners been given serious warnings by the exchange about its capital condition during the period the latter part of August on through early November?

A We told them that they should have a larger excess capital. In other words, a larger cushion of capital that was not necessary at that time to meet capital requirements, but that would stand between them and future adversity.

Q Well, when you gave --

THE COURT: Excuse me. Do you have inthe record -- I must have been distracted if you have because I am not aware that I know what Mr. Bishop's role was at the time.

MR. CAMHY: Excuse me. I think it's probably in the pretrial. Is it in the pretrial order? Well, in any case, let's bring it out.

Q What was your job at the exchange?

A At that time, vice president in charge of the department of member firms.

Q How long prior thereto had you had that job?

A Fiver years. Almost six.

Q During November did their problem become--

more serious?

A During November?

Q Yes. When you wrote these letters directing them to sell securities to liquidate to raise capital.

A I think it became better because they had improved their capital position by selling the securities.

Q No, before you wrote to them.

A I don't understand then what you are asking me.

Q When you told them to sell these securities was it because the need for capital?

A Yes, I said that already. But I also explained that it was not a need for capital to meet requirements, but a need for capital to have a larger excess over requirements.

Q A larger excess?

A That's correct.

Q Well, what kind of an excess?

A We wanted them to have $10 million of capital that they did not need to meet requirements.

Q Did you have the right to tell them this?

A We had the right to ask them for it. Perhaps we didn't have the right to insist but we had the right to

ask.

Q Did you have the right to direct them to sell securities in order to accomplish that?

A Yes.

Q And is that why you told them to sell those securities?

A I believe that by the time I told them to sell the securities it was beginning to appear that they might actually need the capital when their audit was finished.

Q Well, there is a letter there in which you tell them I think to sell all their securities, isn't there?

A Probably.

MR. BROOKS: Do you have an exhibit number, Mr. Camhy, on the letter?

A No, this one says to sell securities sufficient to insure net capital of six million by November the 11th.

THE COURT: November 24.

Q How about November 24? Exhibit 208.

A That's consistent with what I just said.

Q Well, as I read Exhibit 208 it says, "In view of the borderline preliminary capital computation by Haskins & Sells based on their recent audit and the substantial questions concerning the true capital position

of your firm you are directed to sell today all securities remaining in capital accounts, including subordinated accounts and firm position of any nature whatsoever. This instruction covers all securities defined in rule 325 as proprietary positions."

Now, as I understand it, Mr. Bishop, that means that all of their capital, every partner's capital of every subordinated lender's capital that was in securities was to be liquidated?

A That's correct.

Q That means none of them were to hold securities, it all had to be cash items?

A Correct.

Q Now, prior to that time, in the year or two prior to that time had you ever issued an order of this kind in connection with a firm the size of duPont?

A Well, I think we only had two firms the size of duPont, so I guess the answer would be no.

Q Would you consider this a direction of the utmost seriousness?

A Yes.

Q Now, my question to you is: Was the capital such,of the firm such as justified that kind of radical action?

A Yes.

Q You were present at the meeting of December 16, 1969, were you not?

A Could I hear that question again? I wasn't paying enough attention.

(Question read)

Q The meeting of December 16, 1969, atwhich Haskins & Sells and F. I. duPont was present at which their capital was discussed.

A Yes.

Q Can you tell us what happened at that meeting?

A I believe I came into the meeting when it had been under way already between members of my staff and duPont. However, I was there a long time. We went over the same items that my staff had earlier discussed and they gave it to me in what I hoped was a distilled form, but it still took a long time as tothe items that -- there was some question about how they should be treated.

Now, I don't remember all of the details about all of those items. The one in which this trial has been focusing on I do remember fairly well, because it occurred at the end of the meeting in the latter part of the day and I was rather shocked that I had not heard

of an item of $26 million earlier.

After we had gone through what seemed to me like two hours of discussion. And here was some very large item being brought up at the very last minute.

So I explored that item for a little while. I had been dealing with differences on an intensive basis for a year and a half and for five years on a less frequent basis, and I was familiar with the fact that differences were common, stock record differences I am talking about, in those days and in numbers of that size, but it was not too usual to have such a large disparity between long differences and short differences. And this excited my curiosity and led to some questions, and I was told that although the firm had put a great deal of work on their short differences I suppose knowing that there was the possibility of our making a decision to charge some or all of the short differences, but we never charged long differences. So that they had put a lot of work on their long differences but Mr. Speicher said they hadn't done much work on the long differences.

Now, I also knew from my previous experience that when you start -- that differences ordinarily come in sort of a distribution curve just like fund

raising.

You get some ofyour gifts from -- you get half of your money from very large gifts and it's the same way in -- stock record differences usually. There are some stocks that have very large differences and then a whole lot of them have small differences.

So that it was usually productive in a n initial approach to differences to research the large ones. You take the ones over a million dollars first and then those over a half million and so forth.

So I said, well, for heaven's sakes, since there is the possibility that some of these long differences belong to the firm why don't you get busy and work on those long differences instead of just working on the shorts and see if you can't release some of them as capital. And that's what they went home to do.

Q Was it your understanding of what you said that they should research them so that they could find the resolution of the difference to an identifiable solution?

A I understood that in most instances they would do that. In some instances they might determine that the firm owned the securities through exhausting

the other possibilities.

Q That is to say examining all of the other possibilities of claim against the security and finding that no evidence existed in the records of such a claim.

A Might not be only claims. I don't know what they would do in detail.

Q I just mean in the largest sense. About where it belongs someplace.

A Yes.

Q So that in your authorization there were two ways they could do it. One if they resolved it on an identified resolution basis to a transaction or to a specific account or to some proprietary account which indicated a specific identity of the error relating to the difference, or, secondly, if they went through their records and could find no basis for allocating the security to a customer or broker.

MR. BROOKS: Your Honor, I thought Mr. Camhy started their series by saying what was your understanding of what they would do. Now, he's used the term authorization. As I understand it, before that he asked this witness what he said and what he said is not anything that I understood him to explain he understood. I think we should make it clear what was said

and what was understood.

MR. CAMHY: All I am trying to find out from Mr. Bishop is whether the suggestion he made and the implicit authorization that he gave encompassed both kinds of research result: One, based on an identifiable solution and, second, based on the absence of any allocation or claim against the stock in the records.

MR. BROOKS: I object, your Honor. I think that could be simply asked what did he say. And then we could characterize it, or you can.

MR. CAMHY: Your Honor, may I have the question answered my way or should I ask it his way?

THE COURT: Well, why don't we find out -- it seems to me that we ought to find out whether or not Mr. Bishop issued instructions, or authorized anybody to do anything. You are characterizing what happened at the meeting as authorization, and I must confess that that's the fame in which I had been considering it. But I am not sure that that's correct in view of what Mr. Bishop has said. So let's find out.

Q Mr. Bishop, do you remember what you said?

A My best recollection of what I said was, wouldn't it be a good idea to work on these long

differences? I don't believe that I specified either way of the two that you have just been discussing, and I don't believe that I authorized anything. I pointed out to the firm what was a standard technique that many other firms had been telling me they were doing, and that duPont had been heavily engaged in as far as their short differences were concerned.

I wasmerely pointing out to them that how could they let $26 million worth of long differences stand unworked on when they had been putting so much effort into the short differences.

Q Do you remember the question of escheating coming up, with the New York attorney general?

A No, I do not. I saw that in Mr. Lill's memo that I have seen in the last week, but I don't recall it from that meeting.

Q Do you recall the subject of claims of possible owners ofthe stock? That is if you sold somebody's stock in this liquidation program?

A I didn't follow you.

Q Do you remember the discussion about the question of exposure to claims if you sold this stock and it turned out to be owned by somebody?

A Claims by whom?

Q The persons whose stock you sold. If duPont holds stock and it turns out that they weren't duPont's --

A I don't recall any discussion of that. I knew that that was possible. But we're not talking about that.

Q Well, I am talking about it, Mr. Bishop. Do you remember --

A Well, I --

Q Do you remember having talked about it at that time?

A No.

T5b

Q Do you remember saying that you would give no credit for long differences against the items which the exchange intended to charge against capital?

A That was standard exchange practice. I don't believe I would have had to have said that I think my staff would have said it already.

Q Well, do you recall saying it?

A No.

Q Do you recall it being said in your presence?

A No.

THE COURT: We are now at the December 16th meeting?

MR. CAMHY: December 16, 1969, meeting.

THE COURT: All right.

Q Do you recall being told a few days after that meeting that they had met their capital ratio by having sold long differences?

A Well, I believe some time between Christmas and New Year's I was aware that they had improved their capital position and it seems to me that it might have been in January that I was told that it had largely been done through working on their long differences.

Q Exhibit 251.

A Do I have that here?

Q No, we will try to get it to you. Exhibit 123. Mr. Bishop, do you have access to Exhibit 123?

A I don't know. Have you given it to me?

Q No (handing).

Do you have the first one I asked, 251? Do you have that?

A Yes.

Q Now looking at 123, do you recall that memorandum being prepared at the exchange and transmitted to duPont at or about the time that's shown on it? Did you see it before it went out?

A Yes.

Q Did you receive the letter, that is Exhibit 251 and review that?

A I don't really remember receiving it but I assume that I did.

Q Is there any part of it that you remember? For example look at page 7.

A Where?

Q In the center of the page. "Upon learning of the above mentioned charges." Is that your statement in there about "At your suggestion a program should be undertaken to reduce the firm's overages"?

A That seems a rather generalized expression of what

I said. That meant longs.

Q The longs, yes.

A Yes.

Q Now, when you read this, when you saw the language used -- well, first, do you recall having read it or having paid any attention to it?

A No.

Q Would you look at page 8?

A Where?

Q On the center of the page. Can you recall ever having read that or paid any attention to it?

A One starting "We have attempted"?

Q Yes.

A Do I recall this paragraph?

Q Do you recall, yes, having read it?

A No. Not at that time.

Q In fact, as I understand it you barely recall having read the letter.

A I am sure I must have read it, but I don't recall -- having read it.

Q Do you recall having discussed it with anyone?

A I don't have any recollection concerning this letter.

Q Would you look at Exhibit 139? Did you see this

memorandum at the time it was prepared?

A Yes.

Q So as far as you know were its contents correct?

A Well, without having read it all over again I assume that I thought so at the time.

Q Well, that's all I really want Mr. Bishop. Thank you. I think that will be helpful enough. Now, this memorandum ultimately resulted in the very substantial fine and censure against the firm because of the complaint and records related problems, is that right?

A Yes, $110,000.

Q And this was under consideration between the period November 26th and the latter part of January and February when those fines were imposed, isn't that right?

A I would -- in some form, yes.

Q The previous spring there had been a record keeping violation procedure against duPont, isn't that right?

A I believe that's correct.

Q And there had been a censure at that time for failure to keep adequate records?

A I don't remember what it was for but I think there was a censure.

Q And you were aware of it at the time?

A Oh, yes.

Q Now, during the summer there had been an examination by the staff which related both to capital and record keeping problems, do you recall that?

A No.

Q Would you look at Exhibit 130 please, and this is a somewhat different exhibit than the one I intended, Mr. Bishop so I direct your attention to the period May 15, 1969, and ask you whether you saw this memorandum relating to duPont's various operational and record keeping problems (handing).

A I don't believe I would have seen this.

Q Well, would its contents have been made to you in any way?

A n't find out what seven pages of content are rapidly enough to answer your question.

Q Well, in the ordinary course would the content of a memorandum by Mr. Ring, or King, I can't decipher it, about the conditions at duPoint have been made known to you?

A Probably not. It depends on their nature.

Q Do you recall somebody expressing to you the view during that time that "The firm must solve some of its operational problems before there can be any noticeable reduction and the total number of problems received can be reasonably expected. That statistics seem to confirm

that the number of years, requests and complaints will continue to be high because of the firm's operational inability, especially to deliver out securities."" Do you remember that having been called to your attention by anybody?

A No.

Q That this was a member firm which had an operational inability to deliver out securities?

A This fragment you have read to me sounds like part of our investigation of complaints leading to the disciplinary memo of November which we referred to a few minutes ago so this may have been one of the items that led up to that.

Q Would you look at Exhibit 134, please. Was it brought to your attention that examination of the capital position as at June 30, 1969, showed a ratio of 2,298 per cent 2,298 per cent and that the July 31st, ratio was 2,181 per cent?

A This memo would have come to me. I don't recall it. I see it was corrected by several millions dollars in new capital already having come into the firm.

Q Would you look at Exhibit 216 please? Do you recall receiving this memorandum at or about the date written on it?

A Yes.

Q Would you look at Exhibit 135?

A Which one is that?

Q I am about to hand it to you (handing). Do you recall having looked at that memorandum at or about the time or within a week or two after it was prepared?

A No. I did not see it.

Q Can you tell me looking at it in what department it was prepared and to whom it would have been sent?

A The examiners' department. I don't know to whom it would have been sent, except it would have gone to the coordinator.

Q All right. So that was Mr. Chenot.

A Yes. I received a summary of the information entered in Exhibit 134.

Q Do you recall a meeting approximately a week and a half before the meeting of December 16th in which the subject of --

MR. CAMHY: I will withdraw it because I want to put it a different way and I am not sure you were at the meeting so let me put it this way:

Q Were you at a meeting in early December, 1969, at which the subject of the infusion of new capital was discussed?

A I don't know.

Q Let's see if we can find the memorandum. I will try to refresh your recollection with a question, Mr. Bishop. I think it was Mr. Latour who said that they had brought in some new capital to meet the Haskins & Sells deficiency computation but that that had exhausted their ability to do so. Let's see if you were there.

A 1969?

Q Yes, you were there (handing).

A I don't think their capacity to bring in capital was exhausted at that time.

Q Would you look at it please? For the record that is Exhibit 144.

A What about it?

Q Do you recall that meeting?

A The last sentence I remember our having handed them the charges. I don't really remember the rest of it. But I do remember we placed the charges that were in some earlier exhibit having to do with complaints in their hand at some time and this says it was done.

Q That's the kind of thing I guess you would remember?

A Well, I happen to.

Q You take much joy in those things, don't you?

MR. BROOKS: I object, your Honor.

THE COURT: The objection is sustained.

Q Do you remember Mr. Latour telling you that they couldn't raise any more money?

A No, I don't.

MR. CAMHY: Your Honor, that concludes what I have about Mr. Bishop.

MR. BROOKS: I have no questions.

MR. HYDE: I have none, your Honor.

MR. SINGER: I have a few questions.

t5C pm

BY MR. SINGER:

Q Mr. Bishop, there have been a number of documents which have been introducted in evidence and shown to you having to do with two separate censures of the duPont firm. Were those censures kept secret by the Stock Exchange?

A I don't really recall. I am quite sure that the first one was just a censure was, the $110,000 fine I can't remember about that one.

Q Were those centures made known to or indeed were they effected by the Board of Governors of the Exchange?

A They were made known to, I don't recall whether they were done before the Board or before a committee of the Board.

Q In any event, there is no question about the fact, is there, that the Board of Governors knew all about those censures and the bases for them?

A I believe that is correct. I believe the charge memos themselves went to the Board with the duPont answers.

Q Do you know somebody named Robert Fraiman?

A Yes.

Q At this time was he a member of the Board of Governors of the Exchange?

A Yes, he was.

Q With what firm was he connected?

cmbr 2 Bishop-cross

A Hirsch & Co.

Q Is that the same firm that the plaintiffs in this action were partners of?

A Yes.

Q Did youhave anything to do with the merger negotiations?

THE COURT: I didn't hear that.

MR. SINGER: I asked whether Mr. Bishop had anything to do with the merger negotiations.

A No.

THE COURT: Is that the merger negotiation that's --

MR.SINGER: Between Hirsch and duPont.

THE COURT: -- that concerns us?

Q Are you aware of what part, if any, Mr. Fraiman paid in connection with the merger?

A I was under the impression, which I think I got from his own remarks, that he was an active negotiator in the merger.

MR. SINGER: I think Mr. Camhy would stipulate that the chief negotiators for Hirsch were Mr. Kohns, Mr. Mundheim and Mr. Fraiman was not.

MR. CAMHY: I am not so sure I would. I just don't know that it is so. I may be able to do that tomorrow,

your Honor, but I can't do it right now.

Q In any event,Mr. Fraimantold you he was active in the negotiations?

A I don't recall him specifically telling me that but I think from the, you know, my general knowledge of what he was saying to me at that time it appeared that way.

Q I believe you testified, or perhaps it was another witness who testified while you were in court that there were only two firms of duPont size.

A That was me.

Q Andone of those was duPont and the other was Merrill Lynch?

A Well, no, I said three, I think. And I guess it was Bache and duPont were always fighting who was second.

Q Was the financial condition of duPont a matter of concern to the Board of Governors of the Exchange?

A When?

Q During the period late 1969, early 1970?

A Well, I don't recall whether it was or not in late 1969. I don't believe so. I think the staff was taking care of it then. Some time in 1970, yes. By the time this thing came around at least the Board had been hearing about duPont.

Q And when you say by the time this thing came around --

A The merger.

Q -- you are talking about by July 2nd?

A Yes, the merger.

Q The Board was infomred of the problems of duPont such as they were known to the staff.

A Yes. I don't suppose they had as much depth as we did but they had a substantial amount of information.

Q And they knew there were problems?

A Yes.

Q And Mr. Fraiman at that time was on the board?

A Yes.

MR. SINGER: I have no other questions.

MR. CAMIY: Your Honor, may I make the request that I have Mr. Bishop back for a short time tomorrow? And if I don't need him, I will telephone counsel or try to let them know by 9:30, quarter to ten? In fact, I will call them at 9:15 if that is possible or if Mr. Bishop would leave a phone number for us to call to avoid his having a trip if we don't need him? But I would just like to look at some papers to see if there is anything --

MR. BROOKS: Your Honor, we would urge that we finish up with this witness tonight, if it is only a matter of ten or 15 minutes.

MR. CAMIY: Frankly, Mr. Brooks, I can't tell